

EXHIBIT 11

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 Adv. Case No. 19-08289-rdd

5 - x

6 In the Matter of:

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8 PURDUE PHARMA L.P.,

9

10 Debtor.

11 - x

12 PURDUE PHARMA L.P., et al.,

13 Plaintiffs,

14 v.

15 COMMONWEALTH OF MASSACHUSETTS, et al.,

16 Defendants.

17 - x

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Page 2

1 **United States Bankruptcy Court**
2 **300 Quarropas Street, Room 248**
3 **White Plains, NY 10601**

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5 **September 30, 2020**

6 **10:08 AM**

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21 **B E F O R E :**

22 **HON ROBERT D. DRAIN**

23 **U.S. BANKRUPTCY JUDGE**

24

25 **ECRO: UNKNOWN**

Page 3

1 HEARING re Notice of Agenda / Amended Agenda for September
2 30, 2020 Hearing Motion to File Proof of Claim After Claims
3 Bar Date (ECF #1645)

4

5 HEARING re Stipulation and Agreed Order for Withdrawal
6 without Prejudice of Scott County, Mississippi's Motion to
7 Allow/ Deem Timely Late Filing of Proof of Claim (related
8 document(s) 1645, 1647) Filed by James I. McClammy on behalf
9 of Purdue Pharma L.P. (ECF #1711)

10

11 HEARING re Ex Parte Motion of the Debtors for Entry of an
12 Order Shortening Notice with Respect to Motion of the
13 Debtors for Entry of an Order (I) Approving Sale of Debtors
14 Coventry Facility and Related Assets Free and Clear of
15 Liens, Claims, Interests and Encumbrances, (II) Approving
16 Debtors Entry into a Long-Term API Supply Agreement, (III)
17 Authorizing Assumption and Assignment or Assignment, as
18 Applicable, of Executory Contracts and Unexpired Lease and
19 (IV) Granting Related Relief filed by Eli J. Vonnegut on
20 behalf of Purdue Pharma L.P. (related document #1687)
21 (ECF #1685)

22

23 HEARING re Motion for Entry of Order Pursuant to 11 U.S.C.
24 105(a), 107(b) and Fed. R. Bankr. P. 9018 Authorizing the
25 Filing of Certain Information and Exhibits Under Seal in

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1 Connection with the Motion of the Debtors for Entry of an
2 Order (I) Approving Sale of Debtors Coventry Facility and
3 Related Assets Free and Clear of Liens, Claims, Interests
4 and Encumbrances, (II) Approving Debtors Entry into a Long-
5 Term API Supply Agreement, (III) Authorizing Assumption and
6 Assignment or Assignment, as Applicable, of Executory
7 Contracts and Unexpired Leases and (IV) Granting Related
8 Relief (related document #1687) (ECF #1686)

9

10 HEARING re Motion of the Debtors for Entry of an Order (I)
11 Approving Sale of Debtors Coventry Facility and Related
12 Assets Free and Clear of Liens, Claims, Interests and
13 Encumbrances, (II) Approving Debtors Entry into a Long-Term
14 API Supply Agreement, (III) Authorizing Assumption and
15 Assignment or Assignment, as Applicable, of Executory
16 Contracts and Unexpired Leases and (IV) Granting Related
17 Relief (related documents #1685 and #1686) (ECF #1687)

18

19 HEARING re Declaration of Rafael J. Schnitzler in Support of
20 Motion of the Debtors for an Order (I) Approving Sale of
21 Debtors Coventry Facility and Related Assets Free and Clear
22 of Liens, Claims, Interests and Encumbrances, (II) Approving
23 Debtors Entry into a Long- Term API Supply Agreement, (III)
24 Authorizing Assumption and Assignment or Assignment, as
25 Applicable, of Executory Contracts and Unexpired Leases and

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1 (IV) Granting Related Relief filed by Eli J. Vonnegut on
2 behalf of Purdue Pharma L.P. (ECF #1688)

3

4 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
5 L.P. et al v. Commonwealth of Massachusetts et al
6 Motion to Extend Time / Motion to Extend the Preliminary
7 Injunction (related document(s)1) (ECF #197)

8

9 HEARING re Memorandum of Law in Support of Motion to Extend
10 the Preliminary Injunction (related document(s)197) filed by
11 Benjamin S. Kaminetzky on behalf of Avrio Health L.P.,
12 Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma
13 Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue
14 Pharmaceutical Products L.P., Rhodes Pharmaceuticals L.P.,
15 Rhodes Technologies (ECF #198)

16

17 HEARING re Declaration of Benjamin S. Kaminetzky in Support
18 of Debtors' Motion to Extend the Preliminary Injunction
19 (related document(s)197) filed by Benjamin S. Kaminetzky on
20 behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue
21 Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma
22 of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue
23 Pharmaceuticals L.P., Purdue Transdermal Technologies L.P.,
24 Rhodes Pharmaceuticals L.P., Rhodes Technologies (ECF #199)
25 Reply Declaration of Benjamin S. Kaminetzky in Support of

1 Debtors' Motion to Extend the Preliminary Injunction
2 (ECF #206)

3

4 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
5 L.P. et al v. Commonwealth of Massachusetts et al

6 Objection to Motion /Second Restatement of Limited Objection
7 and Reservation of Rights of Tennessee Public Officials in
8 Response to Debtors Motion to Extend the Preliminary
9 Injunction for Richard Sackler (related document(s)197)

10 (ECF #201)

11

12 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
13 L.P. et al v. Commonwealth of Massachusetts et al

14 The Non-Consenting States' Voluntary Commitment and Limited
15 Objection in Response to Purdue's Motion to Extend the
16 Preliminary Injunction (related document(s)197) filed by
17 Andrew M. Troop on behalf of Ad Hoc Group of Non- Consenting
18 States (ECF #202)

19

20 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
21 L.P. et al v. Commonwealth of Massachusetts et al

22 Limited Objection to Extension of the Preliminary Injunction
23 (related document(s)197) filed by Paul A. Rachmuth on behalf
24 of Ad Hoc Committee on Accountability (ECF#205)

25

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1 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
2 L.P. et al v. Commonwealth of Massachusetts et al
3 Reply Memorandum of Law in Support of Motion to extend the
4 Preliminary Injunction (related document(s)197) filed by
5 Benjamin S. Kaminetzky on behalf of Avrio Health L.P.,
6 Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue
7 Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P.,
8 Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies
9 L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies
10 (ECF #205)

11

12 HEARING re Independent Emergency Room Physicians' Motion to
13 Allow Class Treatment (related document(s)1629)
14

15 HEARING re Debtors' Objection to Movant, Independent
16 Emergency Room Physician's Motion for Class Treatment
17 (ECF #1717)

18

19 HEARING re The Official Committee of Unsecured Creditors
20 Response to Movant Independent Emergency Room Physician's
21 Motion for Class Treatment Pursuant to Fed. Bankr. P.
22 9014 and 7023 for an Order Making Fed. R. Civ. P. 23
23 Applicable to These Proceedings, and Granting Related Relief
24 (ECF #1718)

25

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1 HEARING re Objection to Motion / Public Claimants' Joint
2 Objection to Independent Emergency Room Physicians' Motion
3 to Permit the Filing of a Class Proof of Claim (related
4 document(s)1629) filed by Kenneth H. Eckstein on behalf of
5 Ad Hoc Committee of Governmental and Other Contingent
6 Litigation Claimants (ECF #1720)

7

8 HEARING re Joint Statement of Debtors and Public Claimants
9 in Response to Movant Independent Emergency Room Physician's
10 Request to Adjourn [Related to ECF No. 1731] filed by
11 James I. McClammy on behalf of Purdue Pharma L.P.
12 (ECF #1743)

13

14 HEARING re Reply to Motion ER Physician's Motion for Class
15 Treatment (related document(s)1629) filed by Paul S
16 Rothstein (ECF #1731)

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18 HEARING re Debtors' Omnibus Objection to Motions by Certain
19 Claimants for an Order Allowing them to Proceed with a Class
20 Proof of Claim and Certifying Class (ECF #1421)

21

22 HEARING re Public Claimants' Omnibus Objection to Motions
23 for Leave to File Class Proofs of Claim (related
24 document(s)1330, 1362, 1211) filed by Kenneth H. Eckstein on
25 behalf of Ad Hoc Committee of Governmental and Other

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1 Contingent Litigation Claimants (ECF #1431)

2

3 HEARING re Notice of Withdrawal of ER Physician's Motion

4 Except as to Specifically Reserving Indiv Request to

5 Participate in Ongoing Mediation for the Limited Purpose of

6 Implementation of the Plan (related document(s)1629) filed

7 by Paul S Rothstein on behalf of Paul S Rothstein

8 (ECF #1746)

9

10 HEARING re Motion to Authorize / Motion of Debtors for Entry

11 of an Order Authorizing Implementation of a Key Employee

12 Incentive Plan and a Key Employee Retention Plan

13 (ECF #1674)

14

15 HEARING re Objection to Motion For Order Authorizing

16 Implementation of a Key Employee Incentive Plan and a Key

17 Employee Retention Plan (related document(s)1674) filed by

18 Paul Kenan Schwartzberg on behalf of United States Trustee

19 (ECF #1708)

20

21 HEARING re Objection to Motion (related document(s)1674)

22 filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on

23 Accountability (ECF #1709)

24

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1 HEARING re Memorandum of Law In Support of Ad Hoc Committee
2 on Accountability's Objection to Debtors' Motion to Pay
3 Bonuses (related document(s)1674) filed by Paul A.
4 Rachmuth on behalf of Ad Hoc Committee on Accountability
5 (ECF #1710)

6

7 HEARING re Debtors' Omnibus Reply in Support of Motion of
8 Debtors for Entry of an Order Authorizing Implementation of
9 a Key Employee Incentive Plan and a Key Employee Retention
10 Plan (related document(s)1674) filed by Eli J. Vonnegut on
11 behalf of Purdue Pharma L.P. (ECF #1742)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 DAVIS POLK & WARDWELL LLP

4 Attorneys for the Debtor

5 450 Lexington Avenue

6 New York, NY 10017

7

8 BY: MARSHALL HUEBNER (TELEPHONICALLY)

9 JAMES MCCLAMMY (TELEPHONICALLY)

10 CHRISTOPHER ROBERTSON (TELEPHONICALLY)

11

12 PILLSBURY WINTHROP SHAW PITTMAN LLP

13 Attorneys for Ad Hoc Non-Consenting States

14 31 West 52nd Street

15 New York, NY 10019

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17 BY: ANDREW TROOP (TELEPHONICALLY)

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19 EISENBERG & BAUM, LLP

20 Attorneys for Ad Hoc Committee on Accountability

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22 New York, NY 10003

23

24 MICHAEL QUINN (TELEPHONICALLY)

25

1 **JAMES RAND (TELEPHONICALLY)**

2 **Pro Se**

3 **C/O Court**

4 **White Plains, NY**

5

6 **ALSO PRESENT TELEPHONICALLY:**

7

8 **JOSEPHINE GARTRELL**

9 **LOWELL FINSON**

10 **SHEILA BRINBAUM**

11 **SARA BRAUNER**

12 **HAYDEN COLEMAN**

13 **SETH MEYER**

14 **CHRISTOHPER ROBERTSON**

15 **SARA ROITMAN**

16 **ALEX DRAVILLAS**

17 **JASMINE BALL**

18 **JEFFREY ROSEN**

19 **NATASHA LABOVITZ**

20 **EMILY F. MACKAY**

21 **MAURA MONAGHAN**

22 **DANIEL E. STROIK**

23 **HAROLD WILLIFORD**

24 **ADAM HABERKOM**

25 **MARC SKAPOF**

1 **CHRISTOPHER PERKINS**
2 **PETER ARONOFF**
3 **MARC HIRSCHFEILD**
4 **BROOKS BARKER**
5 **MITCHELL P. HURLEY**
6 **ANN LANGLEY**
7 **KEVIN MACLAY**
8 **ARIK PREIS**
9 **CHRISTOPHER SHORE**
10 **MICHELE MEISES**
11 **CYRUS MEHRI**
12 **GERARD UZZI**
13 **HUNTER BLAIN**
14 **GREGORY JOSEPH**
15 **BENJAMIN KAMINETZKY**
16 **NICHOLAS PRETY**
17 **HARRISON CULLEN**
18 **KENNETH H. ECKSTEIN**
19 **JEREMY KLEINMAN**
20 **RAMON NAGUIAT**
21 **M. VIOLA SO**
22 **KATIE STADLER**
23 **JAMES STEMPEL**
24 **BARBARA VAN ROOYAN**
25 **ANNE WALLICE**

1 CATRINA SHEA
2 DENNIS CHU
3 MARIA CHUTCHIAN
4 MEGAN KAPLER
5 MARA LEVENTHAL
6 PAUL ROTHSTEIN
7 DONALD CREADORE
8 CYNTHIA MUNGER
9 STEVEN SKALTE
10 KELSEY MCELVEEN
11 JAKE HOLDREIGHT
12 AISHA RICH
13 OREN LANGER
14 RONALD BASS
15 JOSHUA KARSH
16 SCOTT BICKFORD
17 ARTEM SKOROSTENSKY
18 DIETRICH KNAUTH
19 JEFFREY GARFINKLE
20 BRANDAN MONTMINY
21 SHARA CORNELL
22 PAUL SCHWARTZBERG
23 HAYLEY THEISEN
24 SCOTT FLAHERTY
25 NANCY GOLDIN

P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Drain.

3 We're here in In re Purdue Pharma, LP, et al. This is a
4 completely telephonic omnibus hearing. I'll ask you to
5 identify yourself and your client the first time that you
6 speak. It's probably a good idea to do that if you speak
7 later to make sure that the court reporter can put together
8 your voice with your name and client.

9 There's one authorized recording of these
10 hearings. It's taken by Court Solutions which provides a
11 copy of a daily basis to our clerk's office. If you want to
12 order a transcript, you should contact the clerk's office to
13 arrange for the preparation of one.

14 So with that introduction --

15 MAN: Sir, can you hear me?

16 THE COURT: Yes.

17 MAN: All right. I'm in inmate at USP Terra Haute
18 and I'm -- me and my counsel are attempting the follow these
19 instructions

THE COURT: Okay.

21 MAN: I have a telephonic court hearing before
22 Drain So --

THE COURT: All right. I am Judge Brain, sir.

24 Just keep listening --

MAN: How do you do, sir? Thank you very much for

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1 accepting my call, sir.

2 THE COURT: All right. Very well. All right. So
3 with that introduction by me, I have the amended agenda
4 submitted by the debtors and I'm prepared to go down that
5 agenda.

6 MR. HUEBNER: (Indiscernible), Your Honor. Can I
7 be heard clearly and shall I proceed?

8 THE COURT: Yes. You can go ahead.

9 MR. HUEBNER: Thank you, Your Honor. Good
10 morning. For the record, this is Marshall Huebner of Davis,
11 Polk & Wardwell on behalf of the Purdue debtors.

12 Your Honor, this is the first hearing since we
13 passed our one-year anniversary in Chapter 11 on September
14 15 of last year, and I did want to take just a minute to
15 note in particular there's something that was filed on the
16 docket a couple weeks ago that was not the subject of a
17 hearing but, in fact, is one of the most momentous
18 documents, frankly, that I think is related to this debtors
19 in a very long time. And that document is the mediator's
20 report. I do want to spend just a minute to advise,
21 formally, the Court and the public and they're exactly what
22 that represents because I actually think it is, in fact, a
23 momentous event in these cases.

24 THE COURT: Okay.

25 MR. HUEBNER: As requested in the mediator's

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1 report, the non-federal public claimants which is really the
2 states and the cities and the counties and the tribes have
3 agreed that all value received by them through these Chapter
4 11 cases will be exclusively dedicated to program designed
5 to abate the opioid crisis and cannot be used for any other
6 purpose other than small amounts used to fund administration
7 of the programs themselves and legal fees and costs.

8 As the mediator's report sets forth, to their
9 knowledge, this is the first time that states, territories,
10 native American tribes, and local governments have agreed to
11 be bound by such a commitment which will be embedded both in
12 the plan of reorganization and the confirmation order
13 approving such plans. We have been talking since the very
14 early days of this case -- in fact, the very first day of
15 the case -- about what I think is a shared value of so many
16 people in this case, that 100 percent of the assets of
17 Purdue and hopefully a very substantial sum from the
18 shareholders as part of a global settlement will all be used
19 100 percent to address and abate the opioid crisis.

20 You have many people early in the case spoke about
21 their experience in tobacco and other settlements where they
22 were all sorts of scandalous articles later about what money
23 was used for and we have all, I think, have committed that
24 (indiscernible). I can remember that this was not going to
25 have those attributes to it. And that is now getting locked

1 in in the way that I think is really quite important.

2 A second thing that happened in that mediation
3 report and in phase one of the mediation which went on for
4 months with incredible good faith participation by so many
5 people under the guidance of our able mediators during a
6 national pandemic and times of almost unprecedented pain and
7 dislocation for our country in so many ways are that the
8 value allocation among the non-consenting groups, the ad hoc
9 groups, the MSG, and the native American tribes, including
10 culturally appropriate abatement programs for these
11 communities was also addressed and advanced very
12 substantially. Again, with respect to abatement and local
13 participation mechanisms in determining what programs will
14 be funded and the NAACP and the non-federal public claimants
15 have also committed to continue to engage regarding concern
16 that that could lead to implementation.

17 And so on the government's side with a wide
18 variety, obviously, of sort of levels of government
19 (indiscernible) on the non-federal side, of political
20 perspectives of views about this case and situation -- a
21 truly set of agreements was reached.

22 The progress is actually no less remarkable on the
23 private side. AS the Court knows, there were essentially
24 five groups of pods of private claimants that were sole
25 phase one mediation parties, and in essence, I think the

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1 simplest way to summarize it is that agreements in principle
2 and then for the (indiscernible) of term sheets -- one was
3 done too late to get to a term sheet before the mediation
4 report was filed, that it's moving along -- were reached.
5 There are issues still to be resolved, but I think they are
6 more along the lines of implementation issues by and large.
7 Some of the issues are not tiny, but I think we will get
8 through them.

9 And there as well, for every group other than the
10 personal injury claimants themselves will be eligible to get
11 cash distributions through, and I quote, fair and equitable
12 trust distribution procedures developed by the personal
13 injury claimant's but subject to the consent of the non-
14 federal public claimants, (indiscernible) such to not to be
15 unreasonably withheld and approval by the Court as part of a
16 confirmed plan of reorganization with participation also
17 (indiscernible) the NES committee. Other than the personal
18 injury claimants, the other groups have all agreed to
19 dedicate substantially all their allocations, again, to
20 abatement, specific to the opioid crisis.

21 And so this is really just a tremendous,
22 tremendous achievement for which many people who pulled, you
23 know, all-nighters, late-nighters, weekends, and, of course,
24 the mediators really do deserve to take a moment and pause,
25 because, you know, we had said all along that, you know,

1 intercreditor allocation was obviously not only a seismic
2 issue but a gating issue that simply had to be resolved
3 before we could turn to the next phase of the case and,
4 frankly, hopefully, as we discussed accelerate that next
5 phase appropriately.

6 As the mediator's report sets out and this will
7 be my last comment on the mediator's report, the term sheets
8 are conditioned on a plan of reorganization that includes
9 participation by the Sackler family, and three of the four
10 term sheets are also conditioned on the resolution of the
11 United States' claims on terms reasonably acceptable to the
12 non-federal public claimants. And so as we always knew, you
13 know, one of the meta-issues in the case was intercreditor
14 allocation. Another was, where was the money going to go.
15 And those issues have, in essence, have now been resolved,
16 subject to some final issues that I said before that need to
17 be addressed which now we're able to, I think, you know,
18 fully and hopefully completely to the remaining issues which
19 include involving -- resolving the claims of the Department
20 of Justice and, obviously, ideally, resolving the claims of
21 the state and the parties against the shareholders and going
22 to a resolution that has the type of sort of all-in global
23 structure that we've been talking about since the beginning.

24 So that is something that I think I did want to
25 pause on. The second thing that I do want to pause on just

1 for a minute before literally turning to the individual
2 items on the agenda, is that the agenda letter itself is
3 actually another kind of noteworthy document. As we
4 promised the Court on the first day of the case and I
5 believe that we have kept that promise at every hearing, you
6 know, we would all work like the dickens to narrow, to
7 resolve, to restructure and to hopefully obviate the need
8 for -- to resolve whatever issues we possible could. As
9 this Court know from other experience, in many cases, you
10 have three, five, seven, nine contested matters on,
11 seemingly at each and every omnibus hearing in the Medica
12 case. We've approached this case differently as we always
13 do and so, you know, the reason we filed so many amended
14 agenda letters in the days leading up to the hearing is
15 because we just don't stop until the hearing actually begins
16 trying to narrow and resolve things.

17 And so when you look at the agenda for today, at
18 least the way we see it, you know, we're not here litigating
19 five, six, seven, eight class claim motions which
20 originally, actually, was (indiscernible) to be what
21 September was going to be consumed with and now it's not
22 happening at all, not even one based on the recent
23 withdrawal. We will potentially be going to be commencing a
24 multi-month extremely, complicated, difficult, involved
25 aggregate claims estimation process. Our belief is that is

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1 now obviated in its entirety and we hope for the duration of
2 the case. With respect to the deals that were reached in
3 the phase one mediation, we might well have had to litigate
4 the injunction against multiple core constituencies in this
5 case. Instead, while -- with no disrespect to the objectors
6 who of course we need to discuss and resolve, I think the
7 issues are fair, fair more narrow, certainly with the core
8 constituencies for the most involved in this case, then
9 frankly, we thought they might in the beginning which itself
10 is sort of a negative milestone of sorts. So with respect
11 to the wages motion, as the Court will hear when we get to
12 that, again, what is often very difficult and very
13 inflammatory and we all well understand why. These are
14 complicated issues and words like, (indiscernible) and
15 compensation and, you know, millions are all terribly
16 difficult words in the context of any Chapter 11 case, not
17 just ones that are also politically and medically and --
18 sort of charged with sort health and human safety issues --
19 but all of them.

20 I think this Chapter 11 is difficult place where
21 many people are suffering losses but there as well, the
22 issues, frankly, with our core constituencies for today,
23 other than the U.S. Trustee -- we also do have the ad hoc
24 committee of accountability which is (indiscernible)
25 comprised of five individual people who have filed proofs of

1 claim against Purdue -- those issues (indiscernible) also
2 consensual, which is itself is, I think, is another
3 milestone. And there's Coventry which is, you know, people
4 as I said at one of the other hearings -- people sometimes
5 forget that this is actually an operating pharmaceutical
6 company that every day hundreds of people have to come to
7 work and, you know, do dangerous, complicated things and,
8 you know, sell products and make products in ways that are
9 appropriate in the manufacturing facilities. And, you know,
10 we are relentless in our quest to increase the value of the
11 company, to engage in rational economic transactions, and
12 the Coventry transactions are actually very large material
13 transactions that are completely uncontested in another way
14 that, I think, people are working to add value to the pot so
15 that we can, frankly, get all these professionals out of the
16 way and turn all of our meters off and start getting this
17 value out to the American people for the abatement purposes
18 that every single creditor constituency has agreed that it
19 is going to.

20 So with that, you know -- and forgive me, sir, a
21 ten-minute stage setting to mark or acknowledge our sort of
22 one-year anniversary. We certainly have some very hard work
23 ahead. I don't think anybody is sanguine about that. The
24 issues that remain in front of us are complicated, and as I
25 sometimes say, you know, you still have river to cross but

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1 it doesn't mean that you should forget that you've already
2 crossed a lake that's behind you. And I feel a little bit
3 that that's where we are.

4 So with that, Your Honor, unless the Court has any
5 questions, I'd like to turn the podium over to Mr. Robertson
6 who I think will rip us through us to uncontested matters
7 and then we can begin with the things that are contested.

8 THE COURT: Okay. Well, before that, let me say a
9 few things. First, just a mechanical point. I would urge
10 everyone, again -- not urge -- tell them to put their phones
11 mute so that those who are speaking can be heard and only
12 unmute yourself when it's time to speak.

13 Secondly, I do want to highlight the filing of the
14 mediator's report dated September 23, which of course, I
15 read. First, I want to thank both mediators, Messrs.
16 Phillips and Feinberg. Obviously, they were well
17 compensated for their work, but their work was, looking at
18 it from afar, remarkable and of great benefit, I believe, to
19 the parties and interests, the estate, and the case in
20 general.

21 I also want to think the people who participated
22 in the mediation which was a very wide group and a diverse
23 group -- a remarkably diverse group. The non-federal public
24 claimants include the ad hoc committee of governmental and
25 other contingent litigation claimants, the multi-state

1 governmental entity group and the ad hoc group of non-
2 consenting states. With the exception of two states that
3 settled their issues with these debtors pre-bankruptcy, this
4 group of non-federal public claimants includes all of the
5 states in the union, as well as territories, as well as a
6 wide array of governmental entities that are not states.

7 The group also included a widely dispersed group
8 of personal injury claimants and their respective counsel,
9 third-party payors and insurance health carrier plaintiffs,
10 an ad hoc group of hospitals throughout the country, the NSA
11 committee, that is the ad hoc committee of NSA children,
12 insurance purchasers, Native American tribes, and in an
13 important observational role, the federal government, the
14 Department of Justice, and as included partway through the
15 mediation, public school districts and the NAACP.

16 It's rare -- perhaps unprecedented -- to have the
17 level of consensus that occurred in the mediation occur in
18 this country. And it is due, not only to the mediators, but
19 also as the mediators recognized in their report, the good
20 faith and hard efforts of the parties that I've just listed.

21 I'm also gratified to see that the parties and
22 interests have acknowledge the importance of devoting
23 substantially all of the resources of these debtors to
24 abatement which uniquely in a bankruptcy case can be binding
25 for all time if a plan is confirmed. That was a goal of key

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1 parties in this case and me since the beginning of this case
2 and is a great achievement given the diverse interests
3 involved.

4 The work as Mr. Huebner noted is not complete but
5 the agreements main terms are hammered out by the mediators
6 and the parties are going forward in reliance on them. So I
7 want to thank all of the parties for participating in a such
8 a constructive way in the mediation.

9 So why don't we then continue with the uncontested
10 matters that are on agenda item Roman numeral one.

11 MR. MCCLAMMY: Good morning, Your Honor. It's Jim
12 McClammy from Davis Polk on behalf of the debtors. Can you
13 hear me?

14 THE COURT: Yes. Thanks.

15 MR. MCCLAMMY: Excellent. I have the first item
16 on the agenda. That is the Scott County late filed claim
17 motion. That had been resolved with thanks to the
18 consultation with the UCC and counsel for Scott County by
19 stipulation that presented to the Court on November 22nd.
20 There have been no further responses. The overview of the
21 resolution is essentially that the motion is withdrawn
22 without prejudice allowing time for Scott County to see how
23 the plan is formulated, believing that with respect to how
24 the current agreements have shaped up and the expectation of
25 how the plan will be implemented, that there won't be a need

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1 for them to pursue their claim in the bankruptcy. But if
2 things do not, you know, play out that way, they reserve
3 their ability to refile their motion with parties saying
4 that there's any prejudice to them from having waited but
5 all parties' defenses and positions are preserved as of the
6 date of the filing of their late claim and can be contested
7 at a later time should it be needed.

8 Unless the Court has any questions on the form of
9 the stipulation, we would request that the stipulation be
10 entered. I'm not sure that I saw counsel for Scott County
11 among the parties on the line, but Mr. Coxwell for Scott
12 County did sign the stipulation.

13 THE COURT: Okay. Does anyone have anything
14 further to say on this matter? All right. I will so order
15 the stipulation. This agreement, it appears to me, is one
16 of many that the mediation has helped along to avoid what
17 would otherwise be a contested issue. If in fact the plan
18 does go forward with the abatement that have -- has been
19 agreed to by non-governmental entities in other respects is
20 confirmed, I would assume that since Scott County would not
21 have its own dollar claim but rather benefit like other
22 governmental entities and third parties from the expenditure
23 of the debtor's resources in abatement that motion really
24 loses much of its, if not all, of its meaning, that is the
25 motion for the claim to be deemed timely filed similar to

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1 the treatment of the various class proof of claim motions
2 that have been adjourned sine die.

3 So you can email the stipulation in Word format to
4 chambers to be so ordered.

5 MR. MCCLAMMY: Thank you very much, Your Honor.

6 With that, I will turn the podium over to Mr. Robertson who
7 will be handling agenda item number 2.

8 THE COURT: Okay.

9 MR. ROBERTSON: Good morning, Your Honor. For the
10 record, Christopher Robertson, Davis, Polk & Wardwell on
11 behalf of the debtors. Can I be heard clearly?

12 THE COURT: Yes. Fine, thanks.

13 MR. ROBERTSON: Thank you, Your Honor. This next
14 three items on the agenda today are related. They are the
15 Coventry facility sale motion, the motion to shorten notice
16 with respect to the sale motion, and the related motion to
17 seal. These three motions are unopposed. We filed a
18 certificate of no objection with respect to the sale motion
19 and the motion to seal on Monday the 28th at docket number
20 1735. A revised form of sale order which addresses informal
21 comments from two parties was attached as an exhibit to the
22 certificate of no objection.

23 If I may, Your Honor, very briefly. Debtor Rhodes
24 Technologies operates an active pharmaceutical ingredient or
25 API manufacturing facility in Coventry, Rhode Island. The

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1 Coventry facility sale motion describes a proposed
2 transaction whereby the debtors would sell the Coventry
3 facility and related assets to an affiliate of Nuramco, LLC
4 and would enter into a long-term API supply agreement with
5 Nuramco.

6 As described in the Coventry facility sale motion
7 and the accompanying declaration of Mr. Rafael Schnitzler of
8 PJT Partners who is present telephonically this morning as
9 well, the debtors believe that the transaction will provide
10 the debtors with a stable and secure source of critical APIs
11 at substantially below current cost, while unburdening their
12 estates from the costs associated with the ownership and
13 operation or potential closure of the Coventry facility.

14 The debtors conducted an extensive private
15 marketing and negotiation process and believe that the
16 proposed transaction represents the best available offer, is
17 value maximizing, and it's in the best interest of the
18 debtors and their estates.

19 Your Honor, I believe it makes sense to turn to
20 the motion to shorten, docket number 1875, at this time.
21 For the reasons set forth in that motion, the debtors
22 believe that cause exist to have the sale motion heard on
23 16-days notice and that the notice of the sale motion was
24 timely and sufficient under the circumstances. No parties
25 have objected to the adequacy of notice. I'm happy to

1 address any questions that Your Honor may have, and
2 otherwise, we respectfully request that the motion to
3 shorten be granted.

4 THE COURT: Well, on the notice that was given, in
5 addition to noticing the party of interest under the case
6 management order, did you provided notice of the motion to
7 counterparties, to the executory contracts proposed to be
8 assumed and assigned?

9 MR. ROBERTSON: Your Honor, yes, we did. We
10 provided notice to all contract counterparties, all parties
11 on the parties of interest list. We also provided notice to
12 all know claimants of Rhodes Technologies. We didn't serve
13 the full, you know, sort of motion and declaration but we
14 served a notice of hearing. We also published notice in the
15 Wall Street Journal.

16 THE COURT: And did you serve governmental
17 entities that would be affected by the order including the
18 provisions providing for transfer of authority to
19 manufacture these products?

20 MR. ROBERTSON: Yes, we did, Your Honor. We
21 served notice on all regulatory entities that we believe
22 have any interest in the Rhodes Tech facility and also on
23 sort of the major governmental entities listed in the motion
24 -- DOJ, EA and the like.

25 THE COURT: All right. Okay. Does anyone have

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1 anything to say on the motion to shorten which would shorten
2 the time for the hearing on this motion by five days? All
3 right. I will grant the motion. As most of you know unlike
4 other judges, I normally will not enter these types of
5 motion to shorten on an ex parte basis if I believe that
6 there might be a basis -- a good basis -- to shorten. I'll
7 schedule the hearing on the motion to shorten for the same
8 day as the hearing on the request for underlying relief to
9 give parties and interests an opportunity to say that the
10 matter doesn't need to be heard on a shortened notice.

11 No one has objected here. Based on my review of
12 the motion, the motion does establish sufficient cause to
13 shorten the notice by a handful of days. So you can email
14 that order to chambers.

15 MR. ROBERTSON: Thank you, Your Honor. Turning to
16 the Coventry facility sale motion and the motion to seal,
17 rather than belabor the Court with a further recitation of
18 our papers, I'm happy to address any questions that Your
19 Honor may have. Otherwise, as these motions are unopposed,
20 we would respectfully request that each be granted.

21 THE COURT: Okay. Well, let me deal with the
22 sealing motion first. Does anyone have anything to say on
23 it, including the U.S. Trustee? Okay.

24 I have reviewed the redacted and unredacted motion
25 and based on that review coupled with the absence of an

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1 objection, I've concluded that the limited redactions that
2 are sought here are consistent with Section 107(b) of the
3 bankruptcy code and Rule 9018. They're targeted directly at
4 what would appear to me to be properly protected
5 confidential commercial information that if disclosed would
6 be detrimental to the debtor's business and the ongoing
7 relationship with the purchaser. So I'll grant the motion
8 to redact and to file the redacted version under seal.

9 As far as the underlying motion is concerned,
10 you've answered my question on notice. I want to focus on
11 the closing date. When do the parties contemplate at this
12 point in the calendar closing this transaction?

13 MR. ROBERTSON: So, Your Honor, the APA provides
14 that the closing date cannot be before January 1st of next
15 year without the consent of the parties and my understanding
16 is that the target closing date is on or around January 1.

17 THE COURT: Okay. And in the meantime, the
18 parties are working on a transition services agreement or
19 working under one?

20 MR. ROBERTSON: They are working on the TSI.
21 That's correct.

22 THE COURT: Okay. And there have no glitches with
23 that so far?

24 MR. ROBERTSON: None that I'm aware of, Your
25 Honor. Counsel to the purchaser is also on the line if he

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1 has different views but none that I'm aware of.

2 THE COURT: Okay. And as I understand it,
3 although the assumption and assignment of contracts would be
4 approved as part of the order that you would be submitting
5 to me after this hearing if I grant the motion, you're
6 actually providing a cure notice and a notice of specific
7 contracts later in time around the period of the closing
8 date. Correct?

9 MR. ROBERTSON: That's correct. I'm happy to give
10 more color on that if it's helpful.

11 THE COURT: Okay. Why don't you go through that?
12 I just want to make sure I understand the mechanic. I think
13 I do, but I just want to make sure how it's supposed to
14 work.

15 MR. ROBERTSON: Sure. Certainly. So there are
16 three buckets of contracts. There are the sellers pre-
17 petition contracts that are eligible to be assumed and
18 assigned to the purchaser. There are certain excluded
19 contracts which just simply cannot be assigned to the
20 purchaser which are scheduled under the APA. And there are
21 post-petition contracts, all of which are going to be assigned
22 to the purchaser.

23 The debtor sent the notice attached to Exhibit C
24 to the sale motion to all counterparties, the pre-petition
25 contract that could be or might be assumed in the sale, and

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1 also to all counterparties that post-petition contracts. So
2 those are all the contracts of buckets one and three that I
3 mentioned but not bucket two, the excluded contracts.

4 Proposed cure amounts for notice for all pre-
5 petition contracts, counterparties had until the assumption
6 of the assignment objection deadline which was September
7 27th -- I believe that was Sunday -- at 4:00 p.m. to raise
8 objections the cure amounts. We received one informal
9 objection in the amount of about \$6,000 which we resolved
10 with the counterparty. Those counterparties did, Your
11 Honor, receive, you know, sort of full notice for an
12 assumption and assignment of contracts. They had more than
13 14 days before today's hearing notice in that regard.

14 And then before the closing date, the purchaser
15 can choose which contracts -- which pre-petition contracts
16 that are not excluded contracts -- it will take assignment
17 of. Within five days or five business days after the
18 closing date, the debtors will send a notice and file the
19 notice with the Court informing the counterparties to the
20 contracts that have been selected as assigned contracts as
21 their contracts have indeed assumed and assigned. That's in
22 paragraph 26 of the proposed order.

23 Then there's a second date under the APA which is
24 called the designation deadline -- 60 days post-closing or
25 the effective date of the plan if that comes sooner which

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1 kind of gives the purchaser a second opportunity to
2 designate contracts that weren't designated as assigned
3 contracts (indiscernible) closing date as assigned contracts
4 and they'll be another notice, you know, the same as the
5 first one, essentially, published -- or I should say filed
6 with the Court and served on the contract counterparties
7 notifying them that their contracts have been selected.

8 I believe that -- you know, that is an overview of
9 the process as we see it.

10 THE COURT: Okay. So to summarize then, the
11 motion seeks and the order would provide that I am approving
12 the assumption and assignment of the contracts subject to
13 the procedure that you just set forth, i.e., it may be that
14 certain of those contracts would not be assumed, ultimately,
15 and assigned because the purchaser has the right up to the
16 designation date to included or exclude from that basket.
17 But I am making a finding -- you're asking me to based on
18 the absence of objection after due notice -- that the
19 purchaser is provided adequate assurance of future
20 performance and the cure claims have been fixed as
21 identified by the debtors to the contract counterparties.
22 Correct?

23 MR. ROBERTSON: That is exactly correct, Your
24 Honor.

25 THE COURT: All right. Okay. All right. I guess

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1 one last question. I think I (indiscernible) too. There
2 have been no higher and better offers expressed and there's
3 no one on the phone who wants to make a higher and better
4 offer for this set of assets?

5 MR. ROBERTSON: Your Honor, I can confirm that we
6 have not received any higher or better offers either before
7 filing the motion or subsequently. Obviously, you know, I
8 will allow others to speak up if there's anyone on the
9 phone.

10 THE COURT: Okay. All right. I will grant the
11 motion approving the sale as set forth in the attached
12 agreement as well as the (indiscernible) related long-term
13 API supply agreement as well as authorize the assumption and
14 assignment or assignment as applicable of the executory
15 contracts on expired leases as we just discussed.

16 The sale motion and supporting declaration by the
17 debtor's financial advisor Mr. Schnitzler coupled with the
18 absence of any objection to this motion that has not
19 resolved by the proposed revised order established that this
20 is the proper exercise of business judgment in the best
21 interests of the debtors and their estate -- estates,
22 including in respect to the seller Rhodes Technologies.
23 Further, although it's not clear to me that there really are
24 any interests or liens that were on this property or these
25 assets that would be protected by 363(f), I'm prepared to

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1 make the 363(f) findings and enter the 363(f) portion of the
2 order given the widespread notice and there being no
3 objection. Finally, based on the declaration in the motion
4 and again the fact that the motion's unopposed, I can make
5 the other findings in the order including to respect of
6 Section 363(m) assuming of course that the sale actually
7 closes and the parties go forward with -- in related
8 transaction for the manufacturing agreement.

9 The free and clear provisions of this order are
10 fine with me given, again, the wide notice and the lack of
11 objection. So I have the blacklined proposed order which
12 was all statements filed by a couple of parties -- contract
13 parties. Are there other proposed changes to the order?

14 MR. ROBERTSON: No, Your Honor. I don't believe
15 so.

16 THE COURT: Okay. So you can email that order as
17 well as the sealing order to chambers and they will be
18 entered.

19 MR. ROBERTSON: Thank you, Your Honor. At this
20 time, I would cede the podium back to Mr. McClammy to
21 address the preliminary injunction extension motion.

22 THE COURT: Okay. Very well.

23 MR. KAMINETZKY: Actually, Your Honor, this is
24 Benjamin Kaminetzky, Davis Polk, and I'll be doing the
25 preliminary injunction motion. Can you hear me okay?

1 THE COURT: I can hear you fine. I'm going to
2 suggest that we change the order, though, slightly in the
3 agenda. We had down on the agenda the ER physician class
4 claim motion. The movant in respect to that motion
5 yesterday filed a notice of withdrawal of the motion and it
6 expressed a desire to participate in the mediation or
7 reservation of rights to try to participate in the
8 mediation, but given their withdrawal of the motion, I don't
9 think we should keep people on the phone who were just for
10 that. So unless I'm missing something, the withdrawal, to
11 me, obviously move the motion and I just want to confirm
12 that on the record before we move to the two contested
13 matters -- the preliminary injunction and the
14 (indiscernible) motion.

15 MR. KAMINETZKY: I will turn it back to Mr.
16 McClammy for that. Go ahead.

17 MR. MCCLAMMY: Your Honor, this is Jim McClammy
18 for the debtors. The debtors would agree with that, but I
19 understand Mr. Rothstein is probably on the phone for the ER
20 physician and if there's anything to address after speaks I
21 would be grateful to have the opportunity to do that.

22 THE COURT: Okay.

23 MR. ROTHSTEIN: Your Honor, this is Paul Rothstein
24 on behalf of Dr. Michael Masiowski. Just on his behalf now,
25 we did file last night that notice of withdrawal except as

1 to a certain request that was contained in the original
2 motion. So from a procedural standpoint, I feel that we
3 preserve the issue of allowing us to participate in the
4 mediation if the Court so deems that appropriate. We think
5 it's appropriate for Dr. Masiowski to participate for the
6 following reasons.

7 Number one, the hospital's and emergency room
8 physicians, although a lot of people are not aware of that,
9 are separate entities. The emergency room physicians are
10 the frontline providers. Given the mediation report in
11 paragraph number 7 -- and this is my second point -- given
12 the mediation report, it indicates that right now the
13 mediation is going into the phase of implementation. There
14 is no better person than an emergency room physician to be
15 able to participate directly with the Court approval in the
16 implementation of the program.

17 Number three, Dr. Masiowski has been an emergency
18 physician for more than 20 years. He has dealt with, as we
19 indicated, opioid related conditions. He has a significant
20 knowledge on all the issues related to abatement for opioid
21 related conditions and having him participate in the actual
22 implementation program would be an excellent contribution.

23 Now, number four as to the issues dealing with
24 both the debtor in possession and the creditors -- unsecured
25 creditor committee concern that this may open up a

1 floodgate. We disagree for a number of reasons. Our
2 original class claim was filed in June. Nobody else has
3 come forward to request what we're requesting as relief.
4 And most importantly, nobody who would request relief at
5 this point in time would be able in our perspective to be
6 able to meet the credentials that we have, and I compare
7 this the education context. My wife who happens to have a
8 doctorate in education is a retired educator who has taught
9 teachers, who has taught professors how to teach -- when she
10 was a principal in her situation, the first frontline people
11 were the teacher and here, the first frontline people are
12 the ER, just as she would always be consulting with them in
13 order to make sure that the education of the student is
14 maximized as the teacher is the most critical role, here,
15 the emergency room physician would play a critical role in
16 regards to how programs are going to implemented, be able to
17 present information in a formal way if this Court approves
18 the participation, where we know that administrative issues
19 are going to be dealt with independently from the hospital
20 because the emergency room physician, Dr. Masiowski, has the
21 knowledge and the expertise to do that.

22 So we don't feel it's duplicative. We don't feel
23 that it's excessive. We don't feel that we're just a johnny
24 come lately, given where the mediation is. The mediation
25 had said that everything was done. The implementation was

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1 done and so forth and so on. Obviously, we want to be here
2 now. We're not requesting a reallocation of any resources.
3 That was the guts of the mediation. We understand the based
4 on when our papers were filed, we were not able to
5 participate because we came in too late and that's why we
6 withdrew the motion. We were convinced of that by the
7 committee along with debtors in possession. But we feel
8 that this narrow request is appropriate and is going to help
9 in terms of implementing the program through this Court.

10 That's all I have to say.

11 THE COURT: Okay. Well, the withdrawal is not
12 conditioned on my granting that request, though. Correct?

13 MR. ROTHSTEIN: That's correct.

14 THE COURT: Okay. I am not going to grant that
15 request for the following reasons. First, the mediation or
16 at least the allocation mediation was scheduled for a set
17 time and in fact that time is supposed to expire under the
18 mediation order today, the 30th September. The parties to
19 the mediation had engaged in that mediation over months. To
20 bring a new party into it at this point, I believe, is not
21 appropriate. I also believe that you are misreading the
22 mediation report which discusses and actually uses the word
23 implementation once in paragraph 4 where the mediators state
24 that the NAACP, whom I did, on a consensual basis, with all
25 the parties to the mediation and with the agreement of the

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1 mediators, weeks ago, belatedly include in the mediation as
2 a non-claimant in the case but with its unique position in
3 our society -- again, the mediation report states, quotes,
4 the NAACP and the non-federal public claimants are also
5 committed to continuing to engage regarding concerns about
6 the equitable implementation of the abatement program in
7 each state. This discussion has not ended and will
8 continue.

9 The mediators then say that they also will
10 continue to try to negotiate with the public school
11 districts and will seek a resolution between the public
12 school district and the non-federal government entities.
13 Again, that group joined a little bit later, although,
14 again, several weeks ago. But I think to add another party
15 to the mediation at this point given the state of the
16 mediation is not appropriate.

17 On the other hand, I will note two things. First,
18 although your client has a self-sustaining ER practice, the
19 hospitals also have emergency rooms and should be sensitive
20 to the concerns of abatement in the emergency room context.
21 Secondly, there is nothing to stop your client from coming
22 up with a list of what he believes are improper abatement
23 terms of procedures and suggest those to the hospital's
24 group or the creditor's committee and if they make sense,
25 I'm sure they get a hearing.

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1 But I don't want to open up again to a new party
2 of one at this point a remarkably successful and
3 comprehensive mediation that took place over months at
4 significant cost to the estate and that resulted in
5 significant benefit to the estate. So I'm not by any means
6 denigrating your client or the work that he does. I just
7 think that he needs to make his concerns known in a
8 different way, not in a formal mediation. And I suggest
9 that that way be communicating with the hospital's group and
10 the official creditor's (indiscernible).

11 So why don't we turn, then, back to the motion to
12 extend the preliminary injunction.

13 MR. KAMINETZKY: Thank you, Your Honor. Once
14 again, this is, if it please the Court, Benjamin Kaminetzky
15 from Davis, Polk & Wardwell on behalf of the
16 (indiscernible). Can you hear me clearly?

17 THE COURT: Yes, although I'm getting a little bit
18 of feedback so again I'm going to ask people who are --
19 whose phones are not mute, put them on mute so that we don't
20 get an echo or side noises.

21 MR. KAMINETZKY: So I'll address the debtor's
22 motion to extend the preliminary injunction until March 1st,
23 2021.

24 Your Honor, three objections were filed. I think
25 it's fair to characterize two of those objections as largely

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1 pro forma. A third, by the self-styled ad hoc committee on
2 accountability unfortunately requires a brief response.

3 That said, the debtor's position is fully set
4 forth in its papers, including the reply brief that we filed
5 on Monday night. I know Your Honor has read those papers
6 carefully so I'll be keeping my opening remarks short and
7 then end reserve the right to offer any appropriate rebuttal
8 if necessary.

9 Simply put, Your Honor, the case for a preliminary
10 injunction today is even stronger than it was when the Court
11 last extended it in March. The preliminary injunction
12 halted the value destructive litigation chaos race to the
13 courthouse that had reigned through the first weeks of
14 debtor's bankruptcy. It is the foundation for the orderly,
15 productive, and cooperative efforts that have led to the
16 progress made in these cases over the past year, and in
17 particular, over the past months, and with respect to the
18 mediation as we've discussing, over the past weeks. And the
19 wisdom of granting the preliminary injunction has been
20 affirmed by Chief Judge MaMahon on appeal.

21 Now, Your Honor, just a few of the key
22 achievements since March 2020 when the injunction was
23 extended. They include, number one, as we've been talking
24 about today, a successful mediation. As the mediator's
25 reported, the core constituencies have reached agreement in

1 principle that resolved in large part the critically
2 important issue of allocation of the value of the debtor's
3 estate, a truly monumental achievement exceeding
4 expectations.

5 Two, the ongoing exhaustive information sharing.
6 The debtors have continued to produce. They have produced
7 millions of pages of documents and due diligence materials
8 to key creditor constituencies and have published on the
9 docket year another multi-hundred-page report by the
10 debtor's special committee detailing, among other things,
11 non-cash transfers to or for the benefit of the Sacklers.

12 Number three, the ongoing searching discovery of
13 the Sacklers and their related entities. The Sacklers and
14 associated entities have now produced over 3 million pages
15 of discovery and discovery is continuing against them and
16 those entities.

17 Number four, centralization of claims against the
18 estate. AS Your Honor's aware, we successfully completed
19 the debtor's unprecedented noticing plan which resulted in
20 the filing of approximately 613,000 claims against the
21 estate. In addition, there's the ongoing compliance with
22 the voluntary injunction under the supervision of the
23 monitor. The debtors and their professionals continue to
24 work diligently to address observations and recommendations
25 contained the monitor's recent reports.

1 Number six, continued engagement with key
2 constituencies on post-emergent corporate and governance
3 structures to enable the timely filing of a consensual plan
4 of reorganization. And finally, significant progress on
5 many other important initiatives including securing court
6 approval to fund HRT's development of the low-cost, over-
7 the-counter naloxone opioid overdose rescue medication that
8 has the potential to save many, many lives.

9 Now all of the immense and hard-won progress so
10 far, quite frankly, would likely have impossible with the
11 protection afforded by the preliminary injunction. It is
12 injunction that steered and focused parties with vastly
13 divergent interests towards a value maximizing consensual
14 resolution of the debtor's Chapter 11 cases. And extension
15 of the injunction is now critical to bring this thing home,
16 to providing the space necessary for all parties and
17 interests to work to bring these cases to a successful
18 conclusion. Hard work surely lays ahead but there can no
19 doubt at this point that this work can be accomplished only
20 under the continued protection of an extended preliminary
21 injunction.

22 Now perhaps the most telling proof of this Court's
23 wisdom in entering the initial preliminary injunction last
24 year and extending it in March is that the claimants
25 continues to be largely in agreement that the preliminary

1 injunction should be extended today. No one -- no one --
2 has objected to the continuation of the preliminary
3 injunction with respect to the debtors.

4 No one has objected to the continuation of the
5 preliminary injunction with respect to any of the related
6 parties except for certain members of the Sackler family.
7 And the vast majority of parties and interests have not
8 objected to the extension of injunction even as to those
9 members of the Sackler families. This broad consensus is no
10 doubt a reflection of the significant time and resources
11 that the debtors and many other estate constituencies have
12 invested in recent months to lay the foundation for success
13 of these Chapter 11 cases.

14 Now, Your Honor, I'd like to turn then briefly to
15 the three objections that have been filed which in my view
16 are just as powerful on indicator of the continuing wisdom
17 of the injunction. First, the Tennessee plaintiffs filed a
18 pro forma objection to the continued injunction of their
19 claims against one member of the Sackler family and that's
20 Dr. Richard Sackler. These plaintiffs Your Honor will
21 recall have objected to the injunction twice before,
22 including on jurisdictional grounds. The Tennessee
23 plaintiffs appealed Your Honor's injunction orders. Chief
24 Judge McMahon rejected their arguments and confirmed in a
25 nearly 40-page opinion back in August.

1 In their short objection, they concede that it is,
2 in their words, quote, a virtual certainty, unquote, that
3 this Court will grant debtor's motion to extend and have
4 also laid their right to present argument at the hearing.
5 In light of that, I'm going to simply move on to the next
6 objection.

7 Now, the second objection was that of the non-
8 consenting states. They filed a two-page limited objection
9 to the injunction insofar as it bars them from litigating
10 against nine members of the Sackler families. In that
11 pleading, they also objected to the debtor's proposed order
12 which allowed any party complying with the injunction to
13 move in December to shorten the injunction as to members of
14 the Sackler families. The non-consenting states proposed an
15 alternative offramp structure for the members of their
16 group.

17 As (indiscernible) matter, Your Honor, I'm happy
18 to report that the non-consenting states objection to the
19 form of order has been resolved through discussion and
20 certain revisions to the proposed order. The revised
21 proposed order is attached to my reply declaration as
22 Exhibit A and we've included a blackline of that order as
23 Exhibit B.

24 The revised proposed order permits those parties
25 who are bound or are voluntarily abiding by the preliminary

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1 injunction to move in either December or January to
2 terminate or shorten the injunction with respect to members
3 of the Sackler families. The debtors and it appears most of
4 the parties and interests believe that the injunction
5 through March 1, 2021, is fully justified and should be
6 entered, but this agreed upon procedure provides an
7 efficient and appropriate mechanism for raising
8 particularized concerns a party might have with continuing
9 the injunction as to those certain Sacklers and an
10 opportunity for the debtors and others to respond to address
11 any concerns as appropriate before the Court reevaluates
12 whether an injunction should continue.

13 Now, with respect to their objection to extending
14 the preliminary injunction for the nine Sacklers, the non-
15 consenting states simply reiterate through incorporation by
16 reference the arguments they advanced in prior briefing and
17 assert that the preliminary injunction, quote, interferes
18 with enforcement of state law and harms the public, unquote.
19 This Court of course has already carefully weighed and
20 rejected these arguments multiple time over.

21 The non-consenting state have all but conceded
22 that a continuation of the injunction in its current form is
23 appropriate and essential to success of these cases. The
24 non-consenting states do not grapple with the arguments and
25 evidence the debtors advance in their moving briefs. Again,

1 it's a four-page pleading and they merely incorporate by
2 reference. They do not dispute the preliminary injunction
3 provided the space necessary for key estate constituencies,
4 including themselves -- the non-consenting states -- to
5 obtain extensive discovery from the Sacklers and their
6 affiliate entities.

7 Finally, and this is most telling, the non-
8 consenting states do not dispute that an extended
9 preliminary injunction covering the nine Sacklers will be
10 critical to enabling negotiations and resolution of the
11 amount and contours of the Sackler contribution to the
12 debtor's estates. It simply is inconceivable that
13 productive discussions with the Sacklers on this critical,
14 perhaps last, issue can occur with the noise and disruption
15 and race to the court that the preliminary injunction has
16 prevented. For all of the reasons, the non-consenting
17 states objection should be overruled.

18 Finally, the objection of the so-called ad hoc
19 committee on accountability. The debtors were frankly taken
20 aback by this filing and it's hard to know where to begin.
21 As best as the debtors can tell, the ad hoc committee on
22 accountability which first appeared in these cases in May
23 2020 and represent five persons, none of the whom the
24 debtors, based on the records, believe have ever actually
25 sued the Sacklers demand that the preliminary injunction be

1 modified as to permit an identified and amorphous, quote,
2 credible and public test of the Sacklers' allegations,
3 unquote.

4 Although admittedly unclear, I assume that this
5 means what they're looking for is allowing certain civil
6 litigation through trial of some sort of claims against
7 members of the Sackler family. Their arguments are largely
8 untethered to the applicable legal standards. To the extent
9 they actually do address the elements of the preliminary
10 injunction standard, such as the likelihood of successful
11 organization, the objection makes a series of arguments
12 attacking -- what seem to be attacking or making objections
13 to a plan of reorganization that hasn't been filed yet.

14 These arguments are wrong and utterly irrelevant
15 to the question before the Court today. There is no plan on
16 file and indeed, negotiation among the parties, including
17 members of the Sackler families, must continue before any
18 plan could be filed. As the district courts head, the very
19 fact that settlement discussions are continuing provides
20 support for the finding that continuing the injunction
21 increases the likelihood of a successful reorganization.
22 And that was a quote from page 16 of Judge McMahon's
23 opinion. And this is plainly satisfied here. The ad hoc
24 committee on accountability does not address and thus
25 concedes irreparable harm and the balance of equities,

1 prongs to the preliminary injunction standard.

2 Finally, the remainder of their objection evinces
3 a basic lack of familiarity with what has transpired in
4 these Chapter 11 cases, recycles inflammatory arguments that
5 have been advanced and rejected repeatedly in the past, and
6 goes so far as to disparage this Court and its motives. To
7 be honest, we really didn't know what to do with all of that
8 and we would perhaps have preferred to just let the
9 objection or this part of the objection stand and fall on
10 its own. But the debtors as stewards of this reorganization
11 recognize and deeply appreciate that confidence and accurate
12 information regarding the conduct of these Chapter 11 cases
13 is important. For that reason, the debtors attempted in
14 their reply brief to set the record straight with respect to
15 many, although by no means all, of the outright falsehoods
16 contained in the ad hoc committee of accountability's
17 objection.

18 Now, just a subset for today, Your Honor. The ad
19 hoc committee on accountability argues that the reason the
20 preliminary injunction protects the Sacklers is -- and this
21 is quote -- because they are billionaires and they argue
22 that there is strong and growing public concern that these
23 cases are going run not for the benefit of the creditors or
24 the public but instead for the Sacklers. The debtors have
25 proved time and time again that this is utterly and

1 absolutely false. The debtors sought the preliminary
2 injunction and this Court granted the preliminary injunction
3 to maximize value and protect the debtors, these Chapter 11
4 cases, and all parties and interests.

5 The preliminary injunction was not sought or
6 entered to shield members of the Sackler families from
7 anything. From day one, the debtors in conjunction with key
8 constituencies have worked extremely hard to preserve
9 potentially billions of dollars in value that can be put to
10 productive use ameliorating the opioid crisis, and the
11 simple proof of the fact that the preliminary injunction is
12 intended to protect the debtors, not the Sacklers, is that
13 many parties who have no interest in protecting the
14 Sacklers, just the opposite, such as the unsecured creditors
15 committee, continued to support the injunction.

16 They also claim that the preliminary injunction in
17 these cases have prevented estate constituencies from
18 getting answers that the justice system would otherwise
19 provide, and again, I'm quoting, at official committee of
20 victim representative or an individual examiner is required,
21 quote, to hold the Sacklers accountable. These assertions
22 are also just plain wrong. Put simply, these Chapter 11
23 cases have facilitated information sharing in a way that no
24 civil litigation in diaspora throughout the country could do
25 or have ever done.

1 The Sacklers and their associated entities, for
2 example, have already produced about a half-a-million
3 documents totally 3 million pages in these cases alone.
4 Thus, the suggestion that another committee or an
5 independent examiner is somehow necessary in these cases is
6 almost offensive to the numerous parties, the debtors, the
7 UCC, and many state's attorney generals in both the
8 consenting and non-consenting states who have been working
9 for many, many months and have invested tens of million of
10 dollars and countless of hours analyzing, assessing, and
11 looking at potential claims against the Sacklers and
12 evaluating information relevant to any third-party release
13 that may be included in an ultimate plan of reorganization.

14 And finally, the argument that a public trial is
15 necessary to find, quote, answers or to be transparent has
16 been rejected multiple times for good reason. First, the
17 proof is what has happened in this case to date. The
18 parties have obtained in discovery these cases much more
19 than they could have obtained in civil litigation. Ending
20 the injunction and restarting the civil litigation would
21 actually be a huge step backwards in transparency and
22 accountability.

23 Second, as this Court has recognized, it hardly
24 follows that the outcome of a public trial will resoundingly
25 be accepted as, quote, the truth. Your Honor pointed to the

1 Triangle Shirtwaist Factory fire trial and the Chicago Black
2 Socks trial as examples, and I'm sure we can think of highly
3 public and frankly highly political trials where reasonable
4 people continued to disagree about whether the verdict was
5 correct or just.

6 And third, the outcome of a trial is always
7 uncertain, as Your Honor also notes last year. Injunction
8 preserves the estate value by allowing the parties to
9 continue to conduct discovery regarding estate or other
10 claims against the Sacklers and continued to explore the
11 parties can reach a largely consensual negotiated resolution
12 of such claims.

13 I will address just one other assertion. The ad
14 hoc committee on accountability says that -- and this is a
15 quote -- it appears that the Court has placed a thumb on the
16 scale in favor of the Sacklers. This assertion is
17 absolutely false and inappropriate. Far from placing a
18 thumb on the scale in favor of the Sacklers, the Court has
19 repeatedly emphasized that the Sacklers are not getting a
20 free pass in these Chapter 11 cases. The Court has also
21 made clear the expectation that the debtors, UCC, and others
22 will be doing the utmost to maximize the value of the
23 debtor's estates and distribute and agree on a reasonable
24 allocation of how it is to be distributed. That's a quote
25 from Your Honor from the March 18th hearing. The debtors

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1 correct a number of other mischaracterization or outright
2 falsehood as to the Court's observation and ruling their
3 reply brief.

4 Let me conclude where I began. All of the success
5 I have mentioned have been made possible in large part by
6 the wrested from the value destruction litigation free-for-
7 all afforded by the preliminary injunction. These cases,
8 however, are now entering what will likely prove to be
9 decisive phase. There's absolutely no reason today to alter
10 what has been the status quo for a year now and every reason
11 to keep the injunction in place through March 1st, 2021.

12 With that, unless the Court has any questions, I'm
13 happy to turn the podium over. I'm not sure -- Your Honor,
14 who would you like to hear from next? Would it be those
15 supporting the injunction or would it be Mr. Troop?

16 THE COURT: I think it probably makes sense to
17 hear from the non-consenting states depending on -- and then
18 the other objector -- depending on how that goes. I'm happy
19 to hear from those who support the injunction in reply, but
20 I think I should hear from the objectors at this time.

21 MR. TROOP: Thank you, Your Honor. This is Andrew
22 Troop from Pillsbury, Winthrop, Shaw, Pittman. Your Honor,
23 I am relegated to my cell today so I hope that you're able
24 to hear me clearly.

25 THE COURT: You're coming through clearly.

1 Thanks.

2 MR. TROOP: Thank you, Your Honor. Your Honor, I
3 find it interesting, at best, that the non-consenting states
4 get hoisted by Mr. Kaminetzky for being efficient and
5 focused in connection with both this case.

6 The bottom line when you strip everything away
7 from Mr. Kaminetzky's position and arguments is that there
8 is a strong belief by the debtors that it is impossible vis-
9 à-vis the Sacklers for other parties and interests and
10 frankly the Sacklers to walk and chew gum at the same time.
11 And they draw the conclusion that, but for the cessation of
12 litigation, there would have not been or could not have been
13 success, progress -- pick whatever word Mr. Kaminetzky used
14 -- in terms of where we've gotten today.

15 Almost a year ago, Your Honor, you and I have a
16 colloquy about the effect of the obligation of parties and
17 interests to participate in good faith in the Chapter 11
18 process. And I told you then and I tell you now, that the
19 non-consenting states would have and will continue to do so
20 and would have will, continue to do so whether or not there
21 is litigation proceeding against the Sacklers in recognition
22 of the particular interests of state's sovereigns with
23 regard to the advancement, protection, prosecution of their
24 state laws.

25 I've recognized, Your Honor, that the results of

1 doing so are uncertain, but as I've said before, the value
2 from doing so is not merely economic, and it is reflective
3 of the responsibility that states have to their citizens
4 with regard to their own laws, their own police power
5 actions, and the like. And those arguments, Your Honor, are
6 primarily legal arguments. They are arguments that we have
7 briefed before and there was no reason to burden anyone --
8 although in this virtual world, I can't say the trees that
9 would have killed to do so -- but with the hundreds of pages
10 of briefing that has been carried before.

11 The issue raised by Mr. Kaminetzky with regard to
12 the side-by-side discovery that is going on in the Chapter
13 11 cases with regard to the Sacklers. I note only the
14 following, Your Honor, which is that their process vis-à-vis
15 the Sacklers and as you -- you may not have read them yet.
16 I wouldn't expect you to -- but the motions that were filed
17 last night by the creditor's committee with regard to a
18 variety of objections, exceptions, privileges being
19 asserted, not only vis-à-vis by the Sacklers but in this
20 case the debtors with regard to discovery demonstrates that
21 that process is not an easy one or one that is even close to
22 done. And it's one that is not going to be easily
23 completed. I simply note that since an understanding was
24 reached about the next phase of mediation with the Sacklers,
25 somewhere between four or six scheduled depositions by

1 Sackler-side deponents have -- we've received notice that
2 they can no longer go forward in the next month and they
3 need to continued.

4 So the power of continued litigation is, in my
5 opinion as I've expressed before, clear, but being
6 realistic, Your Honor, which is what I think you above -- I
7 won't say above all else -- but equally have cautioned and
8 urged all of us to be in connection with our approach to
9 litigating issue before you, did result in our engagement as
10 Mr. Kaminetzky reported, talking specifically about the
11 mechanics that have been set in place for the continuation
12 of voluntary compliance not enjoined compliance by the non-
13 consenting states and potentially others and we have in that
14 regard, reached an acceptable understanding with the
15 debtors, demonstrating, I think, precisely, Your Honor, that
16 the non-consenting states absolutely can walk and chew gum
17 at the same time.

18 So, Your Honor, I could go into more detail but I
19 think the points are clear. The idea that we would object
20 and preserve our objections in connection with the request
21 also was not a possibility. Our objections are preserved.
22 Our ability to appeal is preserved should we exercise the
23 offramps. And we have, as we did back in March, recognized
24 the -- and accepted -- the length of the extension on a
25 voluntary basis, vis-à-vis the debtors, and have focused in

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1 on the Sacklers who are a different category of issues,
2 concerns and, frankly, Your Honor, could be separated from
3 the debtor's reorganization plans and still provide for a
4 fruitful discussion with the debtors on their own
5 reorganization.

6 So, Your Honor, unless you have any specific
7 questions for me, that's all I have today.

8 THE COURT: Okay. Thank you. Okay.

9 MR. QUINN: Your Honor --

10 THE COURT: Why don't I hear from Mr. Quinn, I
11 think it is.

12 MR. QUINN: Thank you, Your Honor. Good morning.
13 This is Michael of Quinn of Eisenberg and Baum for the ad
14 hoc committee on accountability.

15 In listening to the debtors speak -- I'm a bit
16 remiss in saying it -- but it made me think of a quote from
17 Ronald Reagan. Trust but verify. In its current form, the
18 debtors have failed to sustain their burden to establish
19 that the preliminary injunction promotes reorganization and
20 the public interest. Unless the debtors can propose a
21 mechanism to provide a public and credible test of the
22 Sackler allegations, the preliminary injunction to be
23 modified for the following two reasons.

24 First, because there will be public or credible
25 way to test the allegations against the Sacklers, it's not

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1 clear how any disclosure statement can satisfy the adequate
2 information standard of Section 1125 or that the plan can
3 satisfy the best interest of creditor's test of 1129. All
4 of the negotiations and discovery that the debtor talked
5 about -- the millions of documents, the depositions -- made
6 be laudable but it's entirely beside the point. They are
7 done in secret and in great part focus on questions about
8 estate claims and the Sackler's credit worthiness, none of
9 which are at issue here.

10 We're not saying, too, as the debtor suggests that
11 full trials or more examiners or yet another committee is
12 necessary to this case. We brought them up as examples that
13 -- as ways that other courts have addressed our concerns in
14 other mass tort cases. Regardless, it's tough pill to
15 swallow to say that we stand by and wait patiently for a
16 plan in order to receive information on the Sackler
17 allegations. Based on the current schedule --

18 THE COURT: Isn't that what normally happens in
19 Chapter 11 cases when there are significant settlements
20 being negotiated?

21 MR. QUINN: Well, the issue, Your Honor, is that
22 this isn't a normal Chapter 11 case.

23 THE COURT: Well, how else would one do it? I
24 mean, that is the mechanism in Chapter 11 and in fact that
25 is what a disclosure statement and a 9019 motion are for.

1 That --

2 MR. QUINN: Your Honor, we're going to welcome --
3 excuse me, Your Honor. We will welcome a disclosure
4 statement. Our issue is being able to verify the disclosure
5 statement and we're -- all we're hoping --

6 THE COURT: You have the ability to take discovery
7 in the context of a motion for approval in this voter
8 statement or a request for confirmation of a plan. That's -
9 - those are both contested matters that you have a right to
10 take discovery on if you want to.

11 MR. QUINN: Well, I appreciate, Your Honor, and
12 we'll reserve our right to do that in the --

13 THE COURT: Well, what you said earlier suggests
14 that you didn't understand that so I wanted to make clear
15 you have that right.

16 MR. QUINN: Thank you.

17 THE COURT: Okay.

18 MR. QUINN: May I continue?

19 THE COURT: Go ahead.

20 MR. QUINN: Based on the current schedule, we
21 recognize that a plan is due shortly. We are not to try to
22 disrupt this schedule. We do, however, question whether
23 parties can complete discovery, analyze that discovery, and
24 negotiate a resolution based on that analysis in such a
25 short period of time.

1 Additionally, any preliminary injunction that
2 makes it impossible to have a public and credible test to
3 the Sackler allegations cannot be in public interests. We
4 certainly appreciate that in the debtor's reply they've
5 clarified the current injunction applies only the civil
6 cases. The form of order they submitted, however, is not so
7 limited. It provides that the Court will enjoin the
8 governmental defendants and private defendants from
9 commencement or continuation of their active judicial
10 administrative or other actions or proceedings and that
11 commencement or continuation of other actions alleging
12 substantially similar facts or cause of action. We take the
13 debtor's replay to mean that they will submit a revised and
14 corrected order to this Court that specifically shows that
15 these are -- this injunction is related only to civil
16 claims.

17 This clarification -- and we appreciate it --
18 hardly addresses the core public interest concern here which
19 is there's a -- that the preliminary injunction in its
20 current form makes it impossible for -- to be transparent
21 about Sackler allegations in any legally actionable way. We
22 understand that the Sackler firmly dispute having any
23 liability. We also know that they've lost two motions to
24 dismiss. We're not here today, Your Honor, to address
25 whether the Sacklers are liable, only that there will never

1 be a true way for anyone other than the small group of
2 insiders to this case to know the truth.

3 Thank you, Your Honor.

4 THE COURT: Can I interrupt you there? You
5 understand --

6 MR. QUINN: Sure.

7 THE COURT: -- that what you refer to as the small
8 group of insiders include the attorney generals from 48
9 states, representatives of thousands of governmental
10 entities, and a official creditors committee. It's broadly
11 based.

12 MR. QUINN: Yes, Your Honor, and I appreciate the
13 hard work that each of these groups is doing, and I no doubt
14 respect of these groups, however, my issue is that there's
15 no information to personal injury, wrongful death-type
16 creditors to evaluate these claims.

17 THE COURT: You understand that thousands of
18 personal injury claimants engaged in the mediation through
19 several capable lawyers and law firms?

20 MR. QUINN: Yes, Your Honor, I do understand that.
21 And as I believe the creditors committee approached me and
22 asked if I would sign the voluntary confidential order -- I
23 don't think those clients or their representatives will be
24 able to get the information either. I think their lawyers
25 are able to -- it's like for the lawyers to be able to see,

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1 but they can't transmit that information to creditors to
2 actually vote whether to -- you know, to confirm the plan.

3 THE COURT: do you have anything more to say? You
4 can continue.

5 MR. QUINN: Well, I think that's it, Your Honor.
6 I appreciate it.

7 THE COURT: Okay. Very well. So I don't know if
8 anyone else has anything to say on this. Mr. Kaminetzky, I
9 don't know if you want to respond.

10 MR. JOSEPH: Well, Your Honor -- this is Gregory
11 Joseph. May I just respond briefly to a couple of points
12 that were made in the argument?

13 THE COURT: Okay.

14 MR. JOSEPH: Mr. Troop mistakenly said that there
15 are four to six depositions that are not going forward in
16 the next month. The fact is that I'm aware of -- that for
17 three of the five, all have been offered dates in October.
18 One of the witnesses had a stroke and was delayed by a
19 month. Another's a medical family issue for counsel, but
20 everything is still going forward quickly.

21 The last lawyer's suggestion that depositions do
22 not address all claims and they're focused on issues like
23 location of assets is false. Three of our depositions have
24 been taken, starting in August, two on the A side have been
25 taken. The non-consenting states question all those and

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1 both the UCC and non-consenting states go into what the last
2 lawyer would refer as the merits of the case.

3 Thank you, Your Honor. I just wanted to make sure
4 the factual record was clear.

5 THE COURT: Okay.

6 MR. KAMINETZKY: Your Honor, very briefly. This
7 is Ben Kaminetzky in from Davis Polk. Just a few points.
8 Just with respect to Mr. Troop's comments about walking and
9 chewing gum at the same time, Mr. Troop did not say that --
10 and did not deny -- that more discovery has happened here
11 than could ever have possibly had in connection with any
12 amount of civil litigation. He also, Your Honor -- I mean,
13 just logic dictates that it's extraordinarily unlikely that
14 the Sacklers would continue to provide the diligence that
15 they're providing in these case while litigating against the
16 -- you know, the non-consenting states, and, clearly, when
17 the non-consenting states have -- the stay would be lifted
18 with respect to them, the consenting states would also have
19 to jump in. It's extraordinarily unlikely that having 50
20 state litigations or 48 state litigations against the
21 Sacklers wouldn't delay, perhaps for a significant amount of
22 time if not year or decades, the resolution of these Chapter
23 11 cases.

24 What's more, Your Honor, once this (indiscernible)
25 of litigation, as Your Honor knows, 2004 discovery is no

1 longer appropriate so that would all grind to a halt which
2 is the information sharing mechanism that's being employed
3 in this case.

4 Clearly, the -- again, just to underscore, the
5 amount of information that's being provided in this case --
6 not only the amount but the type of information that's being
7 provided by the Sacklers in these cases is extraordinary and
8 could never be provided in civil litigation. Just, for
9 example, the Sacklers are offering discovery and have given
10 discovery about the nature of their wealth, the nature of
11 their assets overseas. We even had a deposition in
12 Australia. None of that could possibly ever happen in civil
13 litigation. And one final point, Your Honor, is that all of
14 -- we've talked a lot about the mediation and about the term
15 sheets. Your Honor will note that all of the term sheets,
16 all of the individual deals that were struck with the
17 private side are all contingent upon a final deal with the
18 Sacklers and Sackler participation.

19 It is just certain -- simply incredible to believe
20 that renewed litigation by the entire country of -- by the
21 attorney generals of all the states -- wouldn't severely,
22 severely undermine, if not completely kill, those deals that
23 we have and set us back to square one with respect to the
24 private sides.

25 Finally, let me just turn to the ad hoc committee.

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1 I'm not quite sure what to say because it doesn't seem like
2 any of what they're talking about has anything to do with
3 the preliminary injunction. It seems like they're launching
4 a objection to a disclosure statement that hasn't been
5 released, plan that hasn't been proposed, and actually, what
6 they're mostly talking about is they're trying to mount a
7 belated objection to the protective order that was entered
8 in this case.

9 I'm not quite sure what they envision, but to --
10 they seem to conceive of a situation where discovery and
11 litigation is not done by professionals and is not done by
12 the UCC, the non-consenting states, and all of the groups
13 here that are involved and inside the protective order and
14 have worked diligently for hundreds of thousands of hours
15 and for -- costing millions of dollars to these states --
16 but somehow that the entire world should be privy to every
17 deposition, to every document that's been produced. It's
18 just simply not the way things work.

19 It couldn't work that way. And the attempt to
20 somehow disparage the work of the UCC and the attorney
21 generals and to suggest that the Sacklers are getting some
22 sort of free pass, and absent them being satisfied at the
23 pace of discovery and them being satisfied by seeing
24 absolutely every document or deposition that has been
25 produced in this case, is simply inconceivable.

1 So with that, Your Honor, I will pause.

2 THE COURT: Okay.

3 MR. ECKSTEIN: Your Honor?

4 MAN: Go ahead, Ken. Sorry, (indiscernible).

5 MR. ECKSTEIN: No problem. No problem. Your
6 Honor, this is Ken Eckstein of Kramer, Levin. If it's
7 appropriate, I can -- I have some brief remarks I'd like to
8 make on this motion.

9 THE COURT: Okay. And you should just state who
10 you're on behalf of for the record.

11 MR. ECKSTEIN: Sure, Your Honor, yes. Your Honor,
12 this is Kenneth Eckstein of Kramer, Levin. I'm appearing on
13 behalf of the ad hoc committee of consenting states and
14 governmental entities.

15 Your Honor, first, I would like to -- you know, in
16 connection with our support of the motion, I do want to
17 acknowledge the remarkable progress that has been achieved
18 in the case to date and that was described in detail by Mr.
19 Huebner and describe by Mr. Kaminetzky. The progress to
20 date in fact has been extraordinary and we're pleased that
21 it implements many of the key elements of the term sheet
22 that the ad hoc committee had agreed to at the outset of
23 this case. And we're hopeful that it will be the foundation
24 for, ultimately, reaching a successful and consensual plan
25 in this case.

1 We do think that in light of the progress that has
2 made and in light of the process that the Court has put into
3 place, both with respect to active and expedited litigation
4 that is ongoing in the bankruptcy case, as well as the
5 ongoing mediation process that the Court has recently
6 endorsed, we think that there is good reason to continue to
7 have confidence that we have a framework that ultimately
8 will lead to a successful and near-term plan of
9 reorganization.

10 As Mr. Kaminetzky said, the agreements that were
11 reached in the mediation all specifically do contemplate
12 that an ultimate agreement with the Sacklers needs to be a
13 component of a plan of reorganization and we're very mindful
14 of the fact that the time is now to address that issue while
15 the discovery continues actively in the case. We're also
16 mindful of that fact that the proposed order contemplates
17 the opportunity for an offramp on December 15th, if parties
18 believe that that is appropriate. And we believe that that
19 is significant, particularly in light of the expressed
20 intention by the debtor to propose plan before the end of
21 this year. And we think that the deadlines that have been
22 provided for are consistent with the goal of presenting a
23 plan expeditiously and for the issues with respect to the
24 Sacklers' contribution to this case to ultimately be fully
25 addressed and hopefully resolved within the time frames that

1 all parties have specifically targeted.

2 So based upon those factors, the ad hoc committee
3 is supportive of the debtor's request to extend the
4 injunction. Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. PREIS: Your Honor, this is Arik Preis from
7 Akin, Gump on behalf of the creditors committee. May I be
8 heard?

9 THE COURT: Sure. Good morning.

10 MR. PREIS: First of all, can you hear me?

11 THE COURT: Yes, I can hear you fine. Thank you.

12 MR. PREIS: Thank you. Your Honor, again, Arik
13 Preis from Akin, Gump, Strauss, Hauer & Feld on behalf on
14 the creditors committee. I'll be very brief.

15 As you know, we support the relief -- request for
16 the preliminary injunction motion. The underlying reason
17 for us doing so has not really changed since the beginning
18 of the case. I'm not going to reiterate all of the reasons
19 that we supported it at the beginning of the case. We
20 further support the amended proposed form of order. We
21 think those changes actually make the order better.

22 To be clear, however, we do not endorse for agree
23 with some of the statements that the debtors made in the
24 preliminary injunction motion, in their reply brief, or in
25 Mr. Kaminetzky's statements earlier regarding, among other

1 things, discovery. We hope that that's evident by the two
2 motions we filed last night that Mr. Troop alluded to. We
3 note that the ad hoc group of accountability made some
4 statements as well. To the extent that their statements in
5 some way are read to mean that we are not doing our job,
6 which frankly includes thing that we know that they're
7 interested because we've had conversations with them, we
8 obviously disagree.

9 Finally, Your Honor, there was some colloquy about
10 the schedule regarding five depositions. Mr. Troop
11 mentioned something about that and Mr. Joseph attempted to
12 create -- to correct the record. I feel the need because we
13 were going to raise this with you in another context just to
14 briefly, if you're okay with that, just correct a little bit
15 about what was said and explain to you why this -- why Mr.
16 Troop raised it because it does deal with the discovery that
17 Mr. Kaminetzky had been talking about.

18 Specifically, we were all in your chambers on
19 September 17. There has been eight business days since then
20 and since that day, five deponents who had previously agreed
21 to and were offered dates for depositions have told us that
22 they're no longer available on the dates previously agreed
23 or offered, but instead, they either asked to delay their
24 deposition for a week or a number of weeks or in one
25 instance, not even offered up certain dates in the future.

1 In one instance, as Mr. Joseph correctly point out, it's due
2 to a health issue of the deponent. In one instance, it's
3 due to the health of the father of the lawyer who is
4 preparing the deponent. In one instance, it's due to the
5 deponent's position that he doesn't want to sit for a
6 deposition while a privilege's motion is pending. And in
7 two instances, the individual simply didn't give a reason.

8 We're raising this, Your Honor, as we do with a
9 lot of things in this case when various issues come up
10 because, frankly, we hope the trend doesn't continue, but if
11 it does, we're going to be back to Your Honor seeking Your
12 Honor's assistance. I know that doesn't really relate to
13 the preliminary injunction motion, but it does relate in
14 general to the discovery efforts that Mr. Kaminetzky was
15 talking about and that Mr. Troop and Mr. Joseph alluded to.

16 But again, to round out to where I started, the
17 creditors committee does support the relief requested in the
18 preliminary injunction motion. Thank you, Your Honor.

19 THE COURT: Okay. Thanks. Does anyone else wish
20 to speak? All right. I have before me the debtor's motion
21 to continue the preliminary injunction entered in the early
22 stages of this case into March of 2021 with an opportunity
23 to have second look or has a couple of parties on the phone
24 have said a potential offramp to be heard by the Court in
25 January with a notice to be filed in December.

1 This is clearly a subject that the Court has dealt
2 with before in this case. In fact, I have had now four
3 hearings on the topic, the first being on October 11, 2019;
4 second, on November 6, 2019; the third, March 18th, 2020;
5 and then today's hearing. Obviously, there was a lot more
6 time spent on the record, when one reviews the transcripts,
7 at the earlier hearings. The underlying bases of the
8 arguments were more thoroughly set forth, but I rereviewed
9 all of those transcripts and the briefing in connection with
10 them, as well as the briefing for today. In particular,
11 because two of the objectors -- the Tennessee parties and
12 the ad hoc committee of non-consenting states -- have in
13 essence incorporated their arguments from the prior hearings
14 and their present objections.

15 I agree with Mr. Troop who represents the non-
16 consenting state group that in doing so, neither they or I
17 in considering their arguments belittle the importance of
18 these issues or the extent of the record upon which we are
19 all relying, going back to October of 2019. These are
20 important issues and need care in their analysis.

21 I also agree with Mr. Troop, as was I think
22 implicit in my remarks about the mediator's report that was
23 filed last week, that it appears clear to me that now and
24 during the course of these cases, these clients have engaged
25 in these matters in good faith, including in negotiating

1 towards a Chapter 11 plan in these cases, and keeping open
2 the possibility that that plan would include a material
3 payment by members of the Sackler family, another
4 consideration provided by them.

5 I will address first the objections that relate
6 back to arguments previously made in these cases, namely the
7 Tennessee parties, and the non-consenting ad hoc state
8 committee. The standard here for issuing the preliminary
9 injunction is clear and has been clearly stated in these
10 cases. The debtor has the burden of establishing four
11 factors where third parties are to be enjoined and
12 furtherance of their reorganization effort.

13 First, as with any preliminary injunction, they
14 need to show a likelihood of irreparable harm to them if the
15 injunction is not issued. However, irreparable harm in this
16 context is demonstrated if the actions to be enjoined would
17 embarrass or delay or otherwise impede the debtor's estate
18 and reorganization prospects as noted by Chief Judge -- that
19 is, District Judge -- McMahon in Dunaway v Purdue Pharma,
20 LP, 2020, U.S. District Lexus 143799, SDNY August 11th,
21 2020. See also, In re Lyondell Chemical Flow, 2 B.R. 571,
22 590 through 91, Bankruptcy SDNY 2009.

23 The second circuit is noted that Section 105(a)
24 which is the statutory basis for such an injunction is to
25 be, quote, construed literally to enjoin suits that might

1 impede the reorganization process, close quote, Lautenberg
2 Foundation v Pickard, 512 to that appendix 18, 2nd Circ.
3 2013, citing MacArthur Company v Johns-Manville Corp., 837
4 F2nd, 89-93, 2nd Circ., 1988. That literal construction
5 reflects the underlying principle of preserving the debtor's
6 estate for the creditors and funneling claims to one
7 proceeding in the bankruptcy court, ibid. at 94.

8 In other cases, the circuit has held that such an
9 injunction is properly used to enjoin creditors' lawsuit
10 against third parties where, quote, the injunction plays an
11 important part of the debtor's reorganization plan, close
12 quote, FCC v Drexel Burnham Lambert Group, Inc., 960 F2nd
13 285-293, 2nd Circ., 1992 or where the action to be enjoined,
14 quote, will have an immediate adverse economic consequence
15 for the debtor's estate, close quote. That's now Justice
16 Sotomayor writing in Queenie Limited v Nygard,
17 International, 321 F3rd, 282-287, 2nd Circ., 2003.

18 Having reviewed an extensive record in the fall of
19 last year as well in March of this year, I believe the
20 debtors then established and the record even more so
21 supports today, a preliminary injunction of the third-party,
22 non-criminal claims against the parties covered by the
23 proposed extension of the preliminary injunction, including
24 as objected to by the Tennessee parties, Dr. Richard Sackler
25 and is object to by the ad hoc committee of non-consenting

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1 states, the nine Sackler family members, including Richard
2 Sackler. Those parties not objecting otherwise to the
3 injunction.

4 The two objectors' arguments essentially come down
5 to a view that, notwithstanding the irreparable harm
6 generally to these estates and the reorganization prospect
7 of permitting the lawsuits to go forward that the injunction
8 seeks to continue to enjoin, that progress and that harm
9 will not take -- can still take place and the harm will not
10 occur if just the litigation is permitted to proceed against
11 Richard Sackler and as far as the non-consenting states are
12 occurred, the other nine Sacklers as well.

13 I dealt with this primarily in the March hearing
14 and I continue to believe there what I believe -- to believe
15 now what I believed then, which is that the proposed carve-
16 outs from the injunction would be highly detrimental to the
17 debtor's estates and the prospect of a confirmable Chapter
18 11 plan here without unduly harming the governmental
19 entities. As I noted than and continue to believe now,
20 first, the pursuit of the litigation that the Tennessee and
21 non-consenting states seek necessarily would also involve
22 the debtors and therefore, sidetrack no only negotiations
23 with the Sacklers, but also involve the debtors materially
24 in such litigation.

25 And secondly and perhaps even more importantly,

1 because those claims are similar to those brought by other
2 governmental entities, it is clear to me that those other
3 governmental entities would want to pursue their litigation
4 as well and my not letting them do that would put them at a
5 disadvantage, in terms of timing on litigation outcomes, as
6 well as negotiation leverage in negotiations with the
7 Sacklers if I let the non-consenting states pursue their
8 matters.

9 Going back to the first point, it is and has been
10 clear to me since the October 2019 hearing the case that the
11 multi-jurisdictional, thousands of lawsuits, state of play
12 without this injunction is not beneficial to these debtors
13 and to their estates and creditors. It would result first
14 in multiplication of costs and discovery as well as a
15 limitation of the type of discovery that is available and in
16 place and going forward in this case before me. Discovery
17 that has been agreed by the Sacklers in well-negotiated
18 orders in which not only the official creditors committee
19 but also the non-consenting states had a major role;
20 discovery under bankruptcy 2004 which would not available in
21 non-bankruptcy proceedings; discovery that is well underway
22 and being supervised by me and that will continue.

23 Moreover, it is a clear public interest that
24 litigation, if possible, be resolved promptly, efficiently,
25 and by consensus. From the Supreme Court, the Second

1 Circuit to the most local court, that is a fundamental
2 proposition of our law. Experienced litigators and
3 certainly judges know that when parties control litigation
4 outcome by well-informed negotiations that lead to
5 agreements, the legal system is working. They know that
6 trials are just that -- matters that result in an outcome of
7 either liable or not liable. They are not some form of
8 public truth serum. No litigator would tell you otherwise.

9 So it appears to me that while I agree again with
10 Mr. Troop that the debtors could confirm a plan in these
11 cases that did not have a substantial contribution by the
12 Sacklers, it appears to me to have always been the case and
13 will continue to be the case that such a plan in which they
14 do make a material contribution that satisfies the second
15 circuit's test in *In re Metromedia Fiberwork, Inc.*, 460
16 F3rd, 136, 2nd Circ., 2005, is not only possible but the
17 most likely outcome in this case.

18 I recognize that the Tennessee counties and the ad
19 hoc committee of non-consenting states do indeed have an
20 obligation to their citizens to seek to enforce their laws,
21 but I'm sure they recognize, being lawyers, that that
22 obligation is frequently, if not indeed usually, embodied in
23 a negotiation process rather than a litigation process. I
24 have concluded and continue to believe that the continuation
25 of the injunction as proposed furthers that process and that

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1 to limit it as suggested would cause irreparable harm to the
2 estates and creditors and prospect for a successful
3 reorganization.

4 The remarkable achievement by the parties,
5 including the non-ad hoc -- I'm sorry -- including the ad
6 hoc committee of non-consenting states in resolving as set
7 for the mediator's report, the allocation of value in these
8 cases among creditors, only enhances or increases my view
9 that the injunction as proposed should be granted.

10 The settlements outlined in the mediator's report
11 are truly a gatekeeping item. They recognize the importance
12 of a plan that does resolve claims against and a
13 contribution by the Sacklers. They also continue the focus
14 of these cases on abatement and using the debtors'
15 resources, including their claims against the Sacklers and
16 third parties' right against the Sacklers, to resolve as
17 promptly, efficiently, and with as much value as possible,
18 the opioid crisis.

19 The balance of the harms here also tilts in favor
20 of the debtors, the second of the analysis. It is far from
21 clear to me -- in fact, it would not be the case that if I
22 carved these particular people out of the preliminary
23 injunction and left it at that and no other state or
24 governmental entity would say, me too, which I highly doubt
25 -- but if that were the case and it was just limited to

1 proceeding against nine people in Tennessee and up to 24
2 other states, I do not believe there would be meaningful
3 outcome within the period where the parties are pursuing in
4 good faith a potential negotiated resolution of those claims
5 for the collective creditor body.

6 I will need to recognize that that collective
7 creditor body, as I've said many times before, could be
8 almost every person in the United States, given the claims
9 that have filed, including claims filed by hospitals,
10 states, governmental entities and the like.

11 I know Mr. Troop -- at least maybe just to butter
12 me up -- enjoys movie references. Having read the
13 mediator's report, the image of James Dean telling the
14 lettuce to grow in East of Eden came to my mind. The
15 parties have an incredible opportunity at this moment to
16 move forward quickly to end these cases and get the money
17 out to abate the opioid crisis. They should do it. And
18 anything that distracts them from that process is not worth
19 the candle. They need to make that effort and they are
20 making that effort and I encourage them to continue it.

21 It is clear to me that the public interest favors
22 that effort, not just the public interest generally in
23 settlements, but in getting the value out where it's needed
24 most which I believe all of the parties who have objected
25 today understand and will do their best to ensure. That,

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1 too, is even more important today as we read time and time
2 again that the pandemic has hurt those trying to overcome
3 their addictions more than most.

4 I will note that I am fully aware of the discovery
5 process that has been unfolding in this case. It is clear
6 to me that an immense amount of disclosure has occurred --
7 over 5 million pages, hundreds of thousands of documents,
8 depositions, et cetera, and it will continue to occur. I
9 will note further that both sides on the discovery process --
10 - that is the Sackler side and the committee and other party
11 and interest side on the other hand -- have engaged so far
12 in that process professionally and efficiently.

13 Notwithstanding airing discovery issues with me, I have yet
14 to have to rule on any beyond simply giving guidance to the
15 parties. I have made it clear -- crystal clear -- that the
16 Sacklers will continue to have to provide disclosure in
17 these cases if they expect to get a release.

18 They obviously have rights including
19 basic rights in respect to privilege and the like and I
20 don't require them to waive privilege. But on the other
21 hand, I don't expect them or third parties in the case who
22 are also targets of discovery to unduly or improperly delay
23 any of that discovery. I also expect the parties to
24 negotiate, now that we're in this important and critical
25 second phase of the case.

1 Clearly, this case more than most, but all Chapter
2 11 cases really are collective proceedings. There will
3 always be holdouts in collective proceedings. They have a
4 right, if Congress has circumscribed to do so. That right
5 includes disclosure so that they can understand what a plan
6 and disclosure statement are about. They have a right on a
7 limited basis, or depending on their willingness to
8 participate and engage in well-recognized procedures for
9 participating, to engage in a less-limited basis -- I'm
10 sorry -- a more full basis in a case.

11 Clearly, here, that collective principle exists in
12 spades. We have had an extremely active and well
13 represented and thoughtful official Creditors' Committee.
14 Then we have every state in the union that has not already
15 settled with the Sacklers intimately involved in these
16 cases.

17 And we have thousands of other governmental
18 entities, as well as hundreds, and in some cases thousands,
19 of third parties who have banded together to make their
20 views known and have also engaged thoughtfully and in good
21 faith in the case, including with respect to the private
22 claimants, other than saying they want to have a resolution
23 with the Sacklers, not looking to the Sacklers for value. A
24 remarkable result in return for what they did negotiate and
25 receives in the mediation.

1 So it is clear to me that the public interest is
2 also served by continuation of the preliminary injunction,
3 including in respect of the nine people, that the two
4 governmental groups would have the carveout.

5 As far as the group of five personal injury
6 creditors who have also objected, much of what I said
7 applies to their objection as well. The objection is
8 premised on the objectors' belief that there, "needs to be a
9 public and credible test of claims against the Sacklers."

10 During oral argument, counsel for that group
11 appears to have walked back from the notion that such a
12 public and credible test would be some sort of test
13 litigation, in which it appears from the objection the group
14 itself would not participate in, but would want other
15 parties to bring and fund, or the appointment of an
16 examiner.

17 I will note that either of those two options
18 rightly makes little sense in this context. Where you have
19 an extremely active group of creditors with an extremely
20 broad base, there's no reason to have a third-party
21 examiner, who in any event can only make recommendations and
22 conclusions, which as many cases where examiners have been
23 appointed illustrate are often contested by the parties
24 thereafter as being simply one party's view based on a
25 nonpublic record, because most of what an examiner is told

1 is not public, and is not even a basis for a particular
2 person commencing litigation. I'm not sure what else is
3 left other than that.

4 I will note, as did Chief Judge McMahon in the
5 Purdue opinion that I cited earlier, the Debtors'
6 commitment, which has been there since the beginning, to
7 make public the record in this case after a plan is
8 confirmed and goes effective, will clearly enable the most
9 light to be shed by people who actually do look for truth,
10 i.e. writers, scholars and the like.

11 As far as whether there should be some sort of
12 test case, again, the public interest is as much served by a
13 negotiation process, particularly with the parties involved
14 in that process are so representational of parties in
15 interest, as is the case here.

16 I really don't know more what I could say about
17 what else is in the objection by the five creditors. If
18 there is any concern about transparency and disclosure in
19 this case, it appears to have been a self-generated concern
20 without conducting any due diligence, and in fact, as noted
21 on the record today, refusing the right to conduct due Joe
22 legends offered by the Creditors' Committee. I said on
23 March 18th and I'll say today again, one can make public
24 statements using the nonlegal side of one's brain, but in a
25 courtroom, you have to have more to back it up.

1 So I will grant the motion, having overruled all
2 three objections, and enter the order that has been revised
3 in consultation, with among others, and appropriately so,
4 the ad hoc committee of nonconsenting states.

5 But I have not addressed, because I don't believe
6 I need to, but maybe I should just for the record, the
7 underlying jurisdictional issue here. It is clear to me
8 that I have related to jurisdiction, which is all I need,
9 since this is not a final order but rather a preliminary
10 injunction, as discussed by Judge McMahon in her *Purdue*
11 opinion, and also as set forth in *SPV Osus v. UBS AG*, 82
12 F.3d, 333, 340 (2d Cir. 2018), and *Picard v. Fairfield*
13 *Greenwich Ltd.*, 762 F.3d 199, 211 (2d Cir. 2014), as well
14 as, of course, the truly controlling case here, *Celotex*
15 *Corp. v. Edwards*, 514 U.S. 300 (1994).

16 It was also, I believe, clear to me under the case
17 law, as well as the legislative history to the Bankruptcy
18 Code, namely the legislative history of Section 362(b)(4)
19 and (b)(5) (indiscernible) "United States Code Congressional
20 & Administrative News" (1978) at Page 52, that I clearly
21 have the power to issue an injunction here, notwithstanding
22 that enjoined parties include governmental entities. See,
23 for example, *In re Commonwealth Companies*, 913 F.3d 518 (8th
24 Cir. 1990); *In re T.K. Holdings, Inc. and District of*
25 *Delaware*; *In re Ionosphere Clubs, Inc.*, 111 B.R. 423, 431

1 (Bankr. S.D.N.Y. 1990); and *Browning v. Navarro*, 743 F.2d
2 1069, 1084 (5th Cir. 1984).

3 So, Mr. Kaminetzky, you can email the revised
4 proposed order to chambers.

5 MR. KAMINETZKY: Thank you, Your Honor. We will
6 do so.

7 THE COURT: Okay.

8 MR. HUEBNER: Your Honor, this is Marshall
9 Huebner. I guess I will probably take the podium back now,
10 with Mr. Kaminetzky's consent. And thank you, Your Honor,
11 for your ruling on this injunction. I think that brings us
12 to the last contested matter for today, the last matter for
13 today, giving Your Honor's restructuring of the agenda to
14 deal with the E.R. Physicians' motion first.

15 Let me first verify that I can be heard clearly by
16 the Court?

17 THE COURT: Sorry. You just cut out, Mr. Huebner.

18 MR. HUEBNER: I was just seeking to verify that I
19 could be heard clearly --

20 THE COURT: Oh. Well, yes, you can. You were so
21 silent, but that's just because you fell silent.

22 MR. HUEBNER: No worries. So, Your Honor,
23 ironically, I probably see fewer movies than maybe anyone on
24 this entire hearing, but it happens that I do have two movie
25 references relevant to this case, both from the iconic film,

1 "The Adventures of Buckaroo Bonsai", that hopefully will
2 take us forward in our last few months here. One is, "The
3 future begins tomorrow." And the other is, "Wherever you
4 go, there you are." And hopefully, we will all be going
5 somewhere together, as admonished and directed by the Court,
6 and will be able at long last to have the future we all hope
7 for with the right use of these assets to indeed begin.

8 With respect to wages, Your Honor, as I alluded to
9 in the opening, we have resolved huge slugs of objections
10 that might have been and have a narrowed motion on for
11 today. And we're down to two objections to deal with to
12 that substantially narrowed relief.

13 So let me begin by reporting that the very good
14 news is that, as we set forth in our reply papers, the
15 Debtors have reached agreement with the UCC, the
16 nonconsenting state group, the ad hoc committee of
17 consenting states and other governmental entities, and the
18 multi-state governmental entities group on all aspects of
19 the compensation of related relief that are up for today
20 with respect to the motion at Docket 1674, which is now
21 limited to the key employee retention plan, the key employee
22 retention plan, which relates to, at the time of its filing,
23 the eight insiders of the company that were found to be
24 insiders at our suggestion and request last year. Two of
25 those people have actually resigned since the motion was

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1 even filed. So that group of eight is now down to a group
2 of six. But that is not on for today.

3 We're going to continue to work with those core
4 creditor groups, both on the six insiders, and then there
5 are eight other people they still had some questions about.
6 And so we're going to keep working on that as well, and as
7 always, you know, in an ideal world, resolve all those
8 issues consensually before October 28th.

9 But at a minimum, I certainly have a high degree
10 of confidence, given our track record, that we will
11 substantially narrow any remaining issues as to those few
12 remaining folks, and that the sort of 608 or so people we're
13 moving forward on today -- 606, I think -- are fully
14 consensual, other than an objection by the U.S. Trustee and
15 an objection by the self-styled committee on accountability,
16 which as Your Honor knows, it's five individual claimants.

17 I don't mean to denigrate them. I certainly
18 don't mean to denigrate or minimize any individual's loss,
19 whether their own, or God forbid, a child or family member.
20 But, you know, it does bear mention that it is actually five
21 individual claimants. It's not a sort of a broad thing as
22 represented as a committee the way, obviously, that groups
23 like, you know 24 AG's or, you know, 30 governmental
24 entities, or thousands of municipalities, or UCC obviously
25 is.

1 But I think that that context does make a
2 difference, as does the fact that while we cherish and
3 respect the U.S. Trustee's office, they are not an economic
4 creditor in this case. And given that we have, frankly,
5 hundreds, actually thousands of governmental entities who
6 are involved every single day in this case, I think that,
7 frankly, their consent to today's relief, ultimately, in my
8 mind at least with -- again, no disrespect to the U.S.
9 Trustee's office -- weighs rather heavily against both the
10 lone governmental objection of the U.S. Trustee, which I'll
11 address on the merits in a couple of minutes.

12 So with that introduction, Your Honor, let me note
13 that, as the Court no doubt is aware, since I again have no
14 doubt that the Court is sitting there with our 11-inch
15 binder with many yellow tape flags and post-its on it, much
16 of this is extremely familiar to Your Honor, as in many ways
17 it is in fact nearly identical to the relief that we sought
18 and received from this Court last year. And I actually
19 think that, again, with the exception of the U.S. Trustee,
20 the relief that we are seeking today was not objected to by
21 any party.

22 We also have reached an accommodation with the
23 Creditors' Committee on an amended set of proposals and
24 plans. And I think that with the exception of the CEO,
25 which is not on for today, there was no objection by any

1 other party in the case, other than the U.S. Trustee.

2 What we did this year was again put in place
3 successor programs, as the two declarations made clear, to
4 the Debtors' very long-standing annual compensation programs
5 that have been in place, I think, in one case for more than
6 20 years, and in one case for something like 30 years. The
7 specifics of the plan are set forth in the motion and in the
8 declaration, and so I'm going to be actually relatively
9 brief, and not sort of retread what I know that the Court,
10 and I'm sure others, have read closely as well.

11 With respect to the evidence for today, Your
12 Honor, we have confirmed with the U.S. Trustee and the
13 accountability group that they have agreed that the Debtors'
14 two supporting declarations, one from John Lowne and the
15 other from Josephine Gartrell, can come into evidence today.
16 And I'd like to move their admission.

17 I do note that since the KEIP, which is also
18 covered by their declaration, is not on for today, that the
19 parties for whom you've extended their objection deadline,
20 mainly the UCC and the three non-federal governmental
21 groups, want to -- and the U.S. Trustee as well -- I don't
22 mean to (indiscernible) on this -- to the extent that they,
23 in the end, are not at peace with us by the 28th of October
24 and want to cross-examine the witnesses on the KEIP issues
25 at that second hearing, we certainly understand that that's

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1 the case.

2 But as to the KERP, there is not going to be any
3 such cross-examination by agreement of the parties. And we
4 would ask that the declarations be moved into evidence as
5 the Debtors' factual support for the relief being requested.

6 THE COURT: Okay.

7 MR. PREIS: Your Honor --

8 THE COURT: No, let me just make sure -- maybe
9 this will head off some remarks. What you're asking me to
10 admit into evidence are those portions of John Lowne's
11 declaration, which is dated September 9th, and Josephine
12 Gartrell's declaration, which is dated September 9 as well,
13 that pertain to the key employee retention plan, except with
14 respect to the eight people that are still under discussion,
15 that would be otherwise within that plan?

16 MR. HUEBNER: It's a little bit different than
17 that, Your Honor, because we don't actually need to come
18 back and get a second order, if and as we get the
19 governmental groups comfortable with their questions about
20 those eight. And so that I think that as to the KERP, it's
21 probably right to say that they're just admitted into
22 evidence period.

23 THE COURT: All right.

24 MR. HUEBNER: Because if there are questions
25 remaining about the eight, they'll be raising if they need

1 to.

2 THE COURT: But it wouldn't be --

3 MR. HUEBNER: With respect to the KEIP --

4 THE COURT: But it wouldn't be admitted as to the
5 key employee incentive plan?

6 MR. HUEBNER: Yeah. They are --

7 (Overlapping speakers)

8 THE COURT: As to the (indiscernible) object --

9 MR. HUEBNER: Yeah. So that's a technical point
10 that I guess you could (indiscernible). Mr. Preis and I
11 were actually emailing each other 20 minutes ago about this
12 question. The way I had sort of thought about it -- and I
13 don't think he disagreed -- was that I don't know that you
14 can admit only certain paragraphs of the declaration. So
15 our thought was that the declarations get admitted into
16 evidence, period -- not only certain sections or sentences
17 of them, because some of it is sort of blended, like
18 attrition and things like that -- but that it's understood
19 that there will be a right to cross-examine the witnesses on
20 the KEIP on October 28th, if anybody deems that necessary.

21 THE COURT: Okay.

22 MR. HUEBNER: But if --

23 THE COURT: I understand that now. So does anyone
24 have an objection to the declarations being admitted with
25 that understanding?

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1 MR. PREIS: Your Honor, this is Arik Preis, from
2 Akin Gump, on behalf of the Committee. Can I just say one
3 thing?

4 THE COURT: Sure.

5 MR. PREIS: We don't object to what Mr. Huebner
6 just said and how you correctly corrected it. One thing
7 though, I'm going to guess that at some point Mr. Huebner or
8 the Debtors are going to mention something about
9 uncontroverted evidence, and forget to mention that they are
10 referring only to that portion of the declarations that
11 regard the KERP.

12 THE COURT: Well, I --

13 MR. PREIS: So just want to make sure --

14 THE COURT: I could tell you, I've read both of
15 the declarations, of course read the Debtors' honor this
16 reply, which details the subsequent agreement with the
17 Committee, the NCSGs, the ad hoc committees, and the MSGE.
18 So when I reviewed these declarations, I reviewed them
19 focusing on the key employee retention plan, and as Mr.
20 Huebner said, the portions that just discuss the Debtors'
21 business and attrition issues and the like. So whether
22 someone inadvertently says uncontroverted, it doesn't really
23 pertain to anything other than what's before me today.

24 MR. PREIS: Okay.

25 MR. HUEBNER: And Your Honor, now I'll quote --

1 MR. PREIS: Thank you.

2 MR. HUEBNER: -- after you -- I'll quote the
3 eighth chapter of Matthew, which is, I guess, "Oh, ye of
4 little faith." I in fact would not have done that. I'm not
5 sure why someone thought I would. So I think we're all
6 good, which is the evidence is actually sort of open with
7 respect to --

8 THE COURT: Well, I might have said it, so there
9 you go.

10 MR. HUEBNER: So, all good. So, anyway, back to
11 the subject. So, Your Honor, with that, with those clear
12 and, I think, understood and agreed caveats, may we formally
13 move the two declarations into evidence?

14 THE COURT: Yes. They're admitted as Mr. Lowne's
15 and Ms. Gartrell's direct testimony.

16 (Declarations of John Lowne and Josephine Gartrell
17 admitted into evidence.)

18 MR. HUEBNER: Very good. Thank you, Your Honor.
19 So, Your Honor, as to the substance of the program that is
20 up for today, which is the KERP, we essentially made three
21 changes at the request for three categories of changes, at
22 the request of the UCC and the governmental groups, that can
23 be worked upon these issues.

24 Number one, a reduction in the total amount of the
25 claimants by a little over \$4 million, which is a 40 percent

1 or so cut off of the 2023 payable, 2020 (indiscernible).

2 Number two, that have asked that we move around
3 some of the timing on payment and clawback provisions to
4 make the KERP somewhat more retentive. You have one payment
5 that's a little bit later, other payments are a little bit
6 later, clawbacks still a little bit later in some
7 circumstances. It's all laid out in our reply brief.

8 And then, three, as requested, actually, by the
9 creditor groups, not by us, an acceleration of the LTRP
10 payments that were already largely earned, but in order to
11 keep them retentive, they're going to be payable in '22 and
12 '23. We were asked actually to do those on emergence,
13 subject to a clawback if the employee leaves without good
14 reason or is fired for cause, until the originally proposed
15 payment date.

16 So we would propose that they pay essentially, I
17 think -- and I don't want to speak for them -- but people
18 just didn't want the post-emergence company having to make
19 payments for the pre-emergence period. And so they asked
20 that we accelerate them. In one case, we said that's fine.
21 But we actually want them to stay retentive, because we
22 actually think it's very important to keep the right people
23 here, obviously post-bankruptcy. And so we added a clawback
24 in to ensure that that remained an important goal of the
25 programs, which, frankly, is important to all of us, and of

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1 course, everyone agreed with that. And now (indiscernible)
2 deferral as to the eight people that I talked about before.

3 THE COURT: Do those --

4 MR. HUEBNER: So --

5 THE COURT: Do those -- I'm sorry, just on that
6 point, on the clawback point -- do those people, if they
7 left, say a week after the effective date of a plan, would
8 there be other payments that the company would otherwise owe
9 them that could be set off against a clawback?

10 MR. HUEBNER: Yeah. So, it depends, frankly, I
11 think, on individual -- as probably an individual basis when
12 exactly they left, when things had been settled up. You
13 know, I'm guessing as a general rule, the answer may be no,
14 because I think on your final day of employment, you know,
15 assuming another pay cycle finishes after your departure,
16 you know, VPs are obviously not the key executives, and so
17 they don't have other things that are due over time. Again,
18 the request was not ours to accelerate the payments, but I
19 think we'll have to look to the clawback as a vehicle for
20 getting the money back, you know --

21 THE COURT: Right. Well --

22 MR. HUEBNER: -- should people leave under the
23 right circumstances or the wrong circumstances.

24 THE COURT: I mean, you still can, I guess,
25 commence a lawsuit to get it back.

1 MR. HUEBNER: Correct. Correct.

2 THE COURT: Right.

3 MR. HUEBNER: And I'll just leave it at that, I
4 think, for now.

5 THE COURT: Okay. All right.

6 MR. HUEBNER: So that leaves us with only two
7 outstanding objections, as I said before. One from the U.S.
8 Trustee and one from the five individuals represented by Mr.
9 Quinn.

10 So, Your Honor, in sum, the rejections asked the
11 Court just to do a wholesale rejection of this important
12 aspect of the long-standing annual compensation. They don't
13 actually really offer either factual or legal support for
14 this request. And I also think they sort of sidestep what
15 is in fact the governing legal standard for this, including
16 this Court's ruling that there were not one, not two, but
17 three hearings on analogous issues last years. Actually,
18 four, if you count the mini, mini-plan that we did very
19 early in the case for the six junior folks that we're doing
20 (indiscernible).

21 What the U.S. Trustee's objection I think really
22 unfairly overlooks is that these are not bankruptcy bonuses.
23 This is not a second round of bonuses. This is annual
24 compensation that has been part of annual compensation
25 literally for decades. And so we made this motion for a

1 second time in the case because the case has now gone more
2 than a year and the end of the year approaches.

3 And obviously, we could have done something that
4 would have been very much against the interests of these
5 estates, which is just simply move all these things into
6 base salary, pay it over 12 months, not have the ability to
7 incentivize performance, not have a strong retentive element
8 of having the payments paid, you know, in some cases well
9 after the calendar year ends.

10 But that actually would have been a terrible idea.
11 I guess it would have obviated the need for anybody like
12 (indiscernible) to object, because it wouldn't have had the
13 word "bonus" attached to it. But it actually would have
14 been so much worse for the estate and for the maximization
15 of value, and for the running of this actually relatively
16 large and complicated enterprise.

17 As Your Honor has recognized several times over
18 this case and predecessor cases, non-insider compensation
19 outside the ordinary course -- and there was, by the way, a
20 strong argument, as I understand, last year that this is
21 ordinary course. It's ordinary course because we've been
22 doing it for decades. It's ordinary course because many
23 companies do it. But we invariably take the more
24 conservative route and put things out in full so I might
25 even seek Court approval, and Your Honor has held that these

1 things are governed by 503(c)(3), and that that language
2 essentially incorporates the traditional business judgment
3 rule set out in Section 363(b).

4 And so again, reminiscent of last year, we went
5 through the Dana II factors at extreme but appropriate
6 length -- not extreme -- appropriate length in both our
7 opening papers and our reply papers. And the Trustee just
8 doesn't really address that. In fact, there's a grand total
9 of about a page and a quarter in their objection actually
10 about the KERP, and it actually doesn't really cite law,
11 including the six factors in Dana that we went through in
12 detail.

13 Here in particular, we're not writing on a blank
14 slate because the Debtors are seeking essentially to
15 continue an existing program that this Court already ruled,
16 including overruling the Trustee meets the standard. And
17 this year, we have even more evidence than we had last year.

18 We've already discussed at length at this hearing
19 and its predecessors the likelihood of a successful
20 reorganization, the fact that as Your Honor said, you know,
21 at a prior relevant hearing, "This process does not happen
22 overnight." It certainly does not. This is a very long and
23 hard-fought (indiscernible) for all of us, no matter what
24 our views are about the right outcome here.

25 But at the end of the day, we need employee's

1 every day, you know, running the corona gauntlet, showing up
2 at the manufacturing plant, working next to colleagues, and
3 producing the FDA approved medications and over-the-counter
4 medications that we sell into the market under a self-
5 injunction with a highly-respected monitor that we all
6 agreed on.

7 So they're just not bonuses. As Your Honor noted
8 last year -- and I'm quoting you again -- this is
9 "essentially salary with some modifications or risks on
10 either side, depending on how the employee performs and the
11 company performs." December 4, 2019, Page 113, Lines 17-18.

12 And so the compensation, as we set forth at
13 length, is marked. You know, it may be that the Trustee
14 gets his sort of percentile thing from thinking about this
15 as if it were a KERP, on top of TBC, total direct
16 compensation. But of course, that's not right because, as
17 we lay out in some detail, rather than having the AIP and
18 the LTRP and the KERP and all that together, the KERP
19 replaces the AIP. And so, without it, people would be very
20 substantially undercompensated.

21 And as it was last year, it remains true this
22 year, that Purdue, you know, continues to suffer from
23 relatively material attrition. And not only did two of our
24 eight insiders resign literally since we filed the motion,
25 which is about three weeks, and that's 25 percent of our

1 most senior executives right there, but in addition to them,
2 as of the time of the filing of the motion, another 85, or
3 more than 85, have left since the petition date, which is an
4 annual attrition rate approaching 14 percent.

5 And as you might imagine, getting new people into
6 Purdue Pharma during a pandemic to replace these positions,
7 many of which, as the Court knows, are you know, technical
8 people, you know, people with doctorates, people with
9 expertise, and anti-diversion, all sorts of things like
10 that, it's very difficult.

11 And so again, you know, people sometimes lose
12 sight of the fact that this is a company with complex vendor
13 factoring operations that needs to continue to run its
14 business safely and well for the benefit of all during times
15 that are, without any possible question, unprecedented.

16 And so I'm actually going to, I think, leave the
17 U.S. Trustee's objection at that, because I think that the
18 motion and the weight of authority we cite in our papers,
19 the uncontested evidence as to the KERP is the two
20 declarations, coupled with the overwhelming creditor
21 support, you know, probably, I think, leaves me able to say
22 no more than that on the U.S. Trustee's objection.

23 As to the ad hoc committee on accountability, I
24 would note that there as well, as the Court noted before,
25 you know, this about applying the facts to the law. And the

1 legal standard is, is it a proper exercise of the business
2 judgment of the Debtors? And I should know it is.

3 Of course, our papers make clear, this was the
4 Board of Directors of the Debtors. The compensation
5 committee of the Board of Directors, guided by Willis Towers
6 Watson, you know, one of the sort of premier firms in the
7 field, and obviously, counsel, and ultimately also
8 negotiated with the creditor groups that have been with us
9 on every issue large and small, sometimes in different
10 chairs, but always with us on the issues with their opinions
11 across the board.

12 What they do instead, unfortunately, is sort of
13 similar to what they did on the injunction, which is just,
14 frankly, make a series of extremely sharp and completely
15 counterfactual and unsupported claims and attacks on the
16 Debtors. They seemingly just don't understand, or are
17 refusing to acknowledge, the changes that have taken place
18 in the last several years, and that the Debtors, you know,
19 if they want (indiscernible) -- Purdue and the Sacklers,
20 like as I think everyone in this case knows, except maybe
21 seemingly they don't know, it has now been almost two years
22 since any Sackler held any position at Purdue.

23 And this company has been under the very watchful
24 eye of this Court and the bankruptcy system. You know, the
25 detailing or promotion of opioids stopped almost three years

1 ago. We've had a monitor now for moving towards a year.
2 We've had a 15-page self-injunction, the most intense one
3 probably on the planet -- I've heard no one correct me when
4 I've sort of suggested that before -- in place now also.

5 So, you know, just attacking the company and
6 saying that it's just sort of a terrible thing and therefore
7 nobody should be paid, really just has no basis, and it's
8 really time, hopefully, for those things to stop.

9 But more importantly, if the relief requested were
10 denied and compensation that hundreds of people, including
11 rank-and-file people and hourly wage earners and engineers
12 and technicians and plant operators and anti-diversion
13 people were all to be told that suddenly they're going to be
14 making a fraction of both market compensation and a fraction
15 of the compensation they have come to reasonably rely on
16 that is reasonable and appropriate, the consequences for the
17 value that we can deliver to address the opioid epidemic and
18 the consequences to this case, for example, as Mr.
19 Kaminetzky said before in the preliminary injunction
20 context, if "this all falls apart, the private deals all
21 fall away."

22 And if the private deals all fall away, we're back
23 to hundreds of thousands of filed claims seeking trillions
24 of dollars of damages that actually would cost billions of
25 dollars to fully go through and resolve, it would sort of be

1 like Lehman, but without the trillion dollars of value that
2 Lehman actually has.

3 We actually have far more claims than Lehman in a
4 much higher amount than Lehman, and all of those deals are
5 at risk if the value that we hope to deliver essentially to
6 the country to ameliorate this epidemic evaporates because,
7 you know, things like the (indiscernible) of this motion
8 ultimately lead to a cascade of departures, which leads to
9 the destruction of the Debtors' business, let alone the harm
10 to patients from having FDA approved medication sort of
11 yanked from them, potentially with little to notice, because
12 we just have to shut down.

13 So Your Honor, this is all things you have thought
14 about many times before in this and other cases. You
15 actually rejected claims exactly like this last year, almost
16 verbatim. And you actually specifically said on the October
17 11th hearing at Page 117 to 122 of the transcript, things
18 like, it would actually be "bad exercise of business
19 judgment to simply withhold payment."

20 Finally, Your Honor, I do want to note that the
21 proposed order of course pertains, and did from the outset,
22 the language that was extensively negotiated with multiple
23 creditor groups, including the dissenting states, the
24 consenting states, and the UCC last year -- I think Your
25 Honor actually added some tweaks to it as well -- modified

1 from the language that had previously been approved by the
2 Court in (indiscernible) that provides for safeguards to
3 address issues with respect to finding out in the future the
4 employees who got bonuses potentially engaged in this
5 conduct. And that language, of course, is right in the
6 order where it should be.

7 And so, Your Honor, I actually will leave it at
8 that. You know, again, these are not, in our view, really
9 sort of bonuses in the way that bonuses sometimes become,
10 you know, I think very politically charged. This is really
11 annual compensation that is thoughtfully designed and,
12 frankly, withheld until the end of the year and beyond to
13 make it retentive.

14 And as I said, and I'll say it one last time, I
15 think the overwhelming support we have from groups that as
16 Your Honor may -- very often do not agree with us on all
17 topics, or some do and some don't, or some agree and others
18 disagree bitterly, I think speaks massive volumes about the
19 extreme, thoughtful, good faith engagement of the Debtors
20 and how they designed the programs, adjusted the programs,
21 and thoughtfulness and good faith of the other parties in
22 working with us to come up with something that everybody
23 could live with, and address some of their both social and
24 economic concerns.

25 So, Your Honor, that is what I have to say about

1 the KERP. Obviously, as things come up in response to oral
2 argument of either of the two remaining objectors, I would
3 ask for the indulgence of a few minutes to address anything
4 that seems necessary.

5 THE COURT: Okay. I had a question, and maybe you
6 can answer it. Maybe Ms. Cartrell needs to answer it. I'm
7 sorry, Gartrell. Excuse me. I think I said Cartrell.

8 Her declaration at Paragraph 49 has a table, and
9 it says the aggregate market positioning of the KERP
10 participants in the aggregate is shown in the table below.
11 And I'm really focusing on the two boxes at the bottom of
12 that table. And my question really goes -- I'm focusing on
13 the 50th percentile in both of the boxes. And I'm just
14 wondering how the agreement negotiated with the UCC and
15 other parties, particularly the reduction by 4 million,
16 would change the variance to market numbers for the 50th
17 percentile?

18 MS. GARTRELL: Your Honor, this is Josephine
19 Gartrell, from Willis Towers Watson, on behalf of the
20 Debtors.

21 THE COURT: Yes.

22 MS. GARTRELL: The answer to your question is that
23 it doesn't change because the \$4 million reduction in the
24 program was a specific reduction in the 2020 grant, which
25 went from a little over \$10 million to, I believe, down to

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1 about \$6 million. And so this market TDC analysis, when you
2 see Purdue based plus proposal, takes into consideration the
3 aggregate base salaries of these two groups, plus the KERP
4 program itself.

5 And then when you see the second box that says
6 Purdue based plus proposal, plus retention, that reflects
7 the base salary, plus the KERP, plus the targeted retention
8 for the subset of employees who would receive that.

9 THE COURT: So, I'm sorry, why isn't the \$4
10 million -- why doesn't it change any of this?

11 MS. GARTRELL: Because the LTRP grant is not
12 included in the aggregate positioning for TDC analysis.

13 THE COURT: I got it.

14 MR. HUEBNER: Your Honor, let me help for a
15 second, which may help clear things up. Because that LTRP
16 was not due to be paid until 2023, and now it has the
17 potential of being (indiscernible). And so the effective
18 date, it's not compensation that's paid in 2020. And so
19 this chart just has different elements in it with respect to
20 2020 TDC.

21 THE COURT: So this is just 2020?

22 MR. HUEBNER: Ms. Gartrell, please correct me. I
23 don't want to misstate why it wasn't in the chart.

24 MS. GARTRELL: That's correct.

25 THE COURT: Okay. All right. So I'm right that

1 if the midpoint in aggregate market positioning, for
2 executives, at a low you're 12 percent under at the midpoint
3 of the market, and the high point for the Purdue based plus
4 proposal is five percent over 50 percent for the non-
5 insider, middle management group?

6 MS. GARTRELL: That's correct.

7 THE COURT: Okay. All right. And this is based
8 on other pharmaceutical companies, or companies in Chapter
9 11?

10 MS. GARTRELL: This is based on Willis Towers
11 Watson's 2019 pharma survey. So it's only pharmaceutical
12 companies.

13 THE COURT: Okay. So this does not reflect
14 additional burdens on people in Chapter 11?

15 MS. GARTRELL: It does not.

16 THE COURT: I mean, not burdens, but the pressures
17 that call people away from employment when they're working
18 for a Chapter 11 debtor.

19 MS. GARTRELL: That's correct.

20 THE COURT: Okay. All right.

21 MR. HUEBNER: And Your Honor, in order to be
22 clear, I mean, there is a lot that we say in our papers that
23 I'm not belaboring, but I think it goes almost without
24 saying that working right now at Purdue Pharma in Chapter
25 11, with you know, at least some uncertainty, to say the

1 least, about one's future and the company's ultimate
2 pathway, it's certainly very different than being at a
3 healthy, exciting, non-Chapter 11, you know, working on a
4 COVID vaccine type environment. And so the motion will be -
5 - can afford to be substantially below the 50th percentile
6 and have any hope of a 14 percent very painful attrition
7 level, not become a torrent that could be extremely
8 dangerous to the enterprise, that actually speaks for
9 itself.

10 THE COURT: No, I understand that. Although, I
11 would hope that at least a large number of people would want
12 to see this through to make something truly good happen from
13 this.

14 MR. HUEBNER: Yes. And they do, Your Honor. And
15 I want to be equally clear about that, which is, you know,
16 the transformation of Purdue is in fact in no small part
17 what is keeping, I think, many people at the company -- and
18 obviously, you know, whatever one's view is, I think there
19 are very few people who don't want to see a page turned to a
20 new chapter for this company. And I think, you know, the
21 employees are certainly being told and deriving, frankly,
22 energy and satisfaction and enthusiasm from the fact that,
23 you know, things like the mediation report I gave earlier
24 with, you know, an agreement by all acknowledged parties,
25 that all the assets are going to be used to abate the opioid

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1 crisis. That's a huge driver of people getting up in the
2 morning and sort of covering through the pandemic long
3 enough to come to work.

4 THE COURT: And then one more question for Ms.
5 Gartrell. The Willis Tower survey of pharmaceutical
6 companies, at one of the earlier hearings you testified that
7 the relevant companies that you looked at within that survey
8 comparable in size to Purdue were about 84 companies. Is
9 that still the same case for this analysis?

10 MS. GARTRELL: I don't recall the exact number
11 that was used, but based on the participation rates, I would
12 say that it's around that same number.

13 THE COURT: Okay. Great. Okay. Those were my
14 questions. I'm happy to hear from the U.S. Trustee and from
15 Mr. Quinn.

16 MR. SCHWARTZBERG: Good afternoon, Your Honor.
17 Paul Schwartzberg, for the U.S. Trustee's office.

18 THE COURT: Good afternoon.

19 MR. SCHWARTZBERG: Your Honor, I know you have
20 read the pleadings and I don't want to repeat what's in
21 them. And as you can see from our Footnote 1, we understand
22 that the relief sought here is similar to what was
23 previously before the Court back in 2019. But since we were
24 here before the Court at that time, issues have evolved that
25 lead us to believe that the payment of the awards are not

1 justified at this point.

2 Specifically, Your Honor, as you are well aware,

3 Your Honor had urged the creation of an emergency fund to

4 help those who are suffering from opioid addictions.

5 Unfortunately, that was not created, and funds have not yet

6 gone out to help opioid victims --

7 THE COURT: Well, these people have nothing to do
8 with that. That wasn't their decision.

9 MR. SCHWARTZBERG: At the lower level, that's
10 correct, Your Honor. But in terms of the facts of the case
11 --

12 THE COURT: I mean --

13 MR. SCHWARTZBERG: -- if management could focus on
14 getting funds out to those who are victims of the opioid
15 epidemic, rather than paying extra awards to --

16 THE COURT: I'm not -- you know, I'm sorry. This
17 is just so wrongheaded. I rarely say this about your
18 office, but these people, A, are not the decision-makers,
19 and B, even the decision-makers here for the company are not
20 responsible for there not being an emergency fund. It's
21 just -- it doesn't have any bearing on anything. And it's
22 really -- it's just so wrongheaded. I'm sorry. I rarely
23 have this problem, but I really do on this point. It just
24 doesn't make any sense to me.

25 MR. SCHWARTZBERG: Then, Your Honor, I'll move on.

1 The other issue we brought forth in our objection was the
2 \$8.1 million targeted retention fund, which out of all of
3 the awards being sought, it's the least arguably
4 compensation and seems to be an award that from the reading
5 of the motion seems to be more of a discretionary award.
6 The method by which it's going to be paid, the amount that's
7 going to be paid, to whom it's going to be paid, are very
8 vague and not possible to determine from the motion. And
9 based on that, we didn't think that was justified by the
10 facts and circumstances of the case.

11 THE COURT: Okay. So are you -- is your office
12 going to be part of the discussions on the eight people that
13 the settling parties have carved out of this order?

14 MR. SCHWARTZBERG: Your Honor, we're always happy
15 to talk to the Debtor or any of the parties on the KEIP, and
16 we're open to discussions if people would invite us.

17 THE COURT: I mean, the reason I ask this is that,
18 first, I don't think there's any argument that those people
19 are insiders. In fact, they're not insiders. So they can
20 be provided with a retention payment. And the reason I
21 think that it makes sense to be part of the discussion, as
22 opposed to just saying I don't know, is that it's a highly
23 counterproductive exercise to identify public the people who
24 are so important, people who are not insiders and who are so
25 important that you need to pay them more to stay, than

1 rather to share the information with the economic parties in
2 interest, who can then double check your analysis.

3 To me, this is very similar to the argument that
4 has been refuted by me a number of times, recently by Judge
5 Seidel, affirming me in the Windstream case, as well as by
6 Judge Hoffman, very respected judge from Ohio in the Murray
7 Energy case, that you have to disclose all of the necessary
8 vendors in the motion, which ensures that you're going to be
9 paying more and angering more people than if you had a
10 process to identify them that has checks and balances within
11 it.

12 So it seems to me that the approach taken by the
13 Committee and the two ad hoc committees and the governmental
14 entity committee is the right one, which is we want to do
15 the due diligence on this and see if there's something we
16 disagree with the Debtors about, as opposed to laying out
17 publicly, you know, who the Debtors think they really need
18 to pay more to keep, which in this context, Congress
19 expressly permits, than to pay more to keep them, because it
20 recognized that unless you're feathering your nest, you're
21 authorized to pay a retention plan.

22 So anyway, if you have a concern about that, I
23 would urge you to be on the call, or at least have a
24 debrief, as you often do -- I'm not faulting you on this --
25 you often do have a debrief. And it's not ready yet. But I

1 urge you to do it, to get it, as opposed to just saying we
2 don't know. Because I think there's a good reason why you
3 don't publicly disclose this, just as there's a good reason
4 why the Committee and the other parties in interest said,
5 well, we want to know more.

6 MR. SCHWARTZBERG: Yes, Your Honor.

7 THE COURT: Okay. Is there anything else?

8 MR. SCHWARTZBERG: No, Your Honor.

9 THE COURT: Okay. All right. Anyone else?

10 MR. QUINN: Your Honor --

11 MR. PREIS: This is our -- sorry.

12 THE COURT: I'm sorry.

13 MR. QUINN: This is Michael Quinn.

14 THE COURT: Go ahead, Mr. Quinn.

15 MR. QUINN: Arik, would you like to go first?

16 MR. PREIS: No, I think probably you should go
17 first because you're objecting.

18 MR. QUINN: Your Honor, this is Michael Quinn
19 again, from Eisenberg & Baum, from the ad hoc committee on
20 accountability. Our argument here for not authorizing the
21 KERP is that Purdue should not be granting companywide
22 bonuses when it's been engaged in multiple crimes.

23 This plan, as constructed by the compensation
24 committee of the Board of Directors, promotes companywide
25 bonuses, or whatever term the Debtors would like to call

1 them, without regard to who it's going to.

2 One caveat to that, which the Board approved was
3 that these bonuses wouldn't go to hourly wage workers. Six
4 weeks before they filed their motion for you to approve
5 these bonuses, the Department of Justice filed its claims in
6 this case. Within those claims, the Department of Justice
7 stated that Purdue's misconduct gave rise to criminal
8 liability.

9 Both states also provide their claims to this
10 Court in the summary, and both the consenting states and the
11 nonconsenting states agreed that all unlawful conduct
12 persisted.

13 Our issue is that the plant is not accounted all
14 for carving out any employees that engaged in wrongdoing,
15 let alone alleged wrongdoing. Take, for example, in --

16 THE COURT: Is it the other way around?

17 MR. QUINN: Well, yeah, I think you're right.
18 It's the other way around. My apologies.

19 THE COURT: Okay.

20 MR. QUINN: Take, for example, Your Honor, in the
21 DOJ's claims, they cite -- the summary claims -- they cite
22 the Practice Fusion case. Now, our committee is aware of
23 this case, as we brought it up last spring. In the original
24 Practice Fusion information that was filed last January,
25 U.S. Attorney for the District of Vermont recognized that

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1 the coconspirators of the case, who the DOJ in their claim
2 showed it to be the pharmaceutical company, Purdue, were
3 engaged in those crimes.

4 The information further specified specific titles,
5 without giving names, such as a brand manager, a director of
6 e-marketing, and a physician. This, to me, shows that those
7 type of individuals, those type of titles, are squarely
8 within the KERP plan as potential employees to receive these
9 bonuses.

10 My concern is that, A, it's possible those
11 employees are still retained and will be getting bonuses,
12 but also that the Board of Directors didn't evaluate whether
13 this companywide plan is great, considering the potential
14 crimes.

15 THE COURT: But you --

16 MR. QUINN: Now --

17 THE COURT: Have you --

18 MR. QUINN: Now, I under --

19 THE COURT: Have you read Paragraph 10 of the
20 order?

21 MR. QUINN: I don't have it in front of me, Your
22 Honor, but I'm assuming it has to do with a mechanism
23 they've created that says if they're convicted in a court,
24 the bonuses will be clawed back. Is that what you're
25 referring to?

1 THE COURT: Yes.

2 MR. QUINN: Well, the problem with that is it puts
3 a strong onus on the government to conduct the kind of
4 activities that should be left to the Board of Directors.
5 You know, it sort of shifts the burden for the government to
6 prosecute a case, to bring it to court, to conduct laborious
7 discovery, and to reach some kind of conclusion regarding
8 these crimes.

9 Now, Your Honor, as you can probably imagine,
10 having spent some time with me today, there's been years
11 where, especially in my early days as an associate, I didn't
12 receive bonuses. My firm wasn't going to give me a bonus
13 and depend that -- you know, if there's a finding in a court
14 that Mr. Quinn can't do his business at an extraordinary
15 level, that we should claw back those bonuses. And I think
16 the same applies here, Your Honor.

17 My other issue -- and I'll conclude with this --
18 is that it's just another sign that while Purdue, as the
19 Debtor says and as Debtors' counsel says, is trying to
20 become an asset in the fight against the opioid crisis, some
21 of these long-term plans that have been in place, as the
22 Debtor mentioned, for 20 or more years are still persistent.
23 So this why I'm asking for the KERP plan to not be
24 authorized at this time. Thank you.

25 THE COURT: Okay.

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1 MR. HUEBNER: Your Honor, I don't -- Mr. Preis, I
2 need to say just a couple of things, but why don't you go
3 first, and then I guess I will (indiscernible).

4 MR. PREIS: Your Honor, is it okay if I speak
5 now.

6 THE COURT: Yes.

7 MR. PREIS: Okay. For the record, again, Arik
8 Preis, from Akin Gump Strauss Hauer & Feld, on behalf of the
9 official Creditors' Committee.

10 Your Honor, I just wanted to make (indiscernible).
11 I want to speak briefly about the compromise that we've
12 reached with the Debtors regarding the insider bonus and
13 non-insider retention plans. I'm not going to reiterate
14 what was in the Debtors' papers for what they said on the
15 record regarding the agreement, but I wanted to give you
16 some background as to why we reached the deal that we did.
17 I'm not going to comment on some of the things Mr. Huebner
18 said that we disagree with, including some things he said
19 about the attrition rate and how he characterized that. But
20 it's not (indiscernible) --

21 THE COURT: You faded out. Can you hear me, Mr.
22 Huebner?

23 MR. HUEBNER: Yes, Your Honor. You're perfectly
24 clear. I think Mr. Preis was unfortunately --

25 THE COURT: Mr. Preis? Mr. Preis faded out

1 though. I can't hear him.

2 MR. HUEBNER: Yeah. I -- is there a problem --

3 THE COURT: Mr. Preis, can you just check to make
4 sure you're not on mute?

5 MR. HUEBNER: Can somebody from Akin Gump text
6 him, please?

7 MR. HURLEY: Marshall, I texted him.

8 THE COURT: Okay. That was Mr. Hurley?

9 MR. HURLEY: Yes, Your Honor. Yes.

10 THE COURT: Okay. All right. Well, you know
11 what, Mr. Huebner, why don't you just respond while Mr.
12 Preis is getting back on the phone?

13 MR. HUEBNER: Sure. Your Honor, just very
14 quickly, as unfortunately, I may not give him enough time to
15 get back on the phone. I don't really have very much to
16 say.

17 With respect to the U.S. Trustee's comments, I
18 want to be very clear. I think the Court echoed the
19 sentiments. It is very, very unfortunate that funds have
20 not yet gone out. It's also unfortunate, if it were
21 possible, that this case was not already over and all the
22 funds going out.

23 But the people who object to this plan have no
24 control whatsoever over the fact, as this Court knows well
25 and I think everyone else on this call knows well,

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1 essentially that there are five of the creditor groups in
2 this case just could not agree on an ERF, and at the end of
3 the day directed us to stop pushing for it because it would
4 not have gone well, given their fundamentally different
5 positions.

6 To say that someone out of the plant in Wilson,
7 North Carolina or up in Rhode Island shouldn't get paid the
8 part of their compensation that had been withheld for 30
9 years and paid at year end because of differing views at the
10 high levels in government and otherwise over ERF, simply
11 doesn't make any sense.

12 But we share the frustration that money is not yet
13 out to help people. This is not the right way to address
14 that.

15 With respect to the smaller number of people in
16 the retention plan, Your Honor, just so the record is clear,
17 I think our papers are clear on this point. The targeted
18 retention is actually just a continuation of the plan that
19 was approved last year. We're trying to spend money
20 judiciously and only where we need to, because we know where
21 every dollar that's there now is going, and I think we
22 try to be sensitive to that everywhere we can.

23 With respect to Mr. Quinn's relatively limited
24 comments, I'll also be limited. What Mr. Quinn may not know
25 is that last year, we already were, I think, collectively

1 quite sensitive to not paying people for (indiscernible) in
2 the company's history that were, at a minimum, much more
3 complex and under generally very strong views by the
4 company's conduct. And we did things with respect to the
5 various programs that essentially cut out the period that
6 ended very early in 2018, when detailing stopped. We're now
7 free of that, and so, you know, the reality is that this is
8 2020 compensation when Purdue was in Chapter 11, under the
9 watchful eye of frankly hundreds of people, and dozens of
10 staff, and 48 attorneys general, and the DOJ, and a monitor,
11 and a self-injunction.

12 So I understand that people have very strong views
13 about Purdue's past in all direction, and certainly with Mr.
14 Quinn's clients, and I actually read some of their stories
15 last night. And obviously, I have nothing but endless
16 sympathy and pain for people who have suffered addiction, or
17 lost children, or the like, which is just unspeakable, and
18 there's no response to that. But the reality is that this
19 is for 2020, when maintaining the value of these assets so
20 that they can be deployed to god-willing stop, and
21 ameliorate, and address the current crisis raging, is what
22 this is for, and we believe it's carefully and appropriately
23 tailored to do so, and I will leave my remarks at that.

24 THE COURT: Well, let me ask you, obviously
25 Secretary, former Governor Vilsack is the monitor in this

1 case. Is there a reporting mechanism whereby if he
2 determines that someone is engaging in misconduct, he'll
3 report that to the board, and the board can take appropriate
4 action, including cancelling payments.

5 MR. HUEBNER: Your Honor, the company has a very
6 broad compliance program, that as you might imagine gets a
7 lot of attention, and there compliance reports. I've
8 probably been at every board meeting for the last now,
9 almost three years.

10 And it's not just Secretary Vilsack, although I
11 think that is also true, that he certainly has brought to
12 the board, you know, whatever concerns he has, either
13 structural or otherwise. I don't believe, to my knowledge,
14 I don't want to sort of (indiscernible), so I don't believe
15 that he has, in fact, ever pointed at an individual
16 employee, because his current practice analysis is really
17 about structures, and policies, and procedures, and best
18 practices.

19 But there's actually a broad array of other
20 mechanisms in place that are designed to ensure that the
21 behavior of the company in the current period would
22 hopefully be above anybody's reproach, even its most severe
23 critics. And obviously I can -- I'm not getting
24 (indiscernible) anybody to say that if obviously the company
25 found out that people were engaged in this conduct at

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1 present, immediate, decisive action would unquestionably be
2 taken.

3 THE COURT: So, Mr. Preis, I see you're back on.

4 I decided to go ahead, because you had other colleagues on
5 the phone, with just letting Mr. Huebner respond briefly to
6 the two objections. But you cut out pretty early in your
7 remarks.

8 MR. PREIS: Okay, and thank you, Your Honor, and I
9 apologize for that. And I was, I did catch up, I did ask my
10 colleagues what Mr. Huebner was saying, so I think I am
11 caught up. May I start over?

12 THE COURT: Well, where you left off that you
13 weren't going to say why you might disagree with the Debtors
14 on their view of attrition, but then you cut out.

15 MR. PREIS: Okay, so then what I was going to say
16 is, what I really want to address the reasons why we reached
17 the deal that we did. And I think that if I provide you
18 these five points, it may help you as you consider the
19 objections that were raised. I'm also going to address the
20 two objections that were raised specifically.

21 So first and foremost, I want to thank the
22 advisors to the ad hoc committee, and the nonconsenting
23 state group, and the MSEG, as well as many of the actual AGs
24 in the nonconsenting group, who we worked closely with and
25 coordinated with over the past few weeks, in reaching a

1 compromise with the Debtors. As the Debtors said, the
2 compromise was supported by all of our of us. We think that
3 this full agreement by all the four groups is an important
4 factor here.

5 The second point I want to make is that the fact
6 that the four groups, we all view the non-insiders as very
7 different than the six insiders that remain as part of the
8 KEIP. We were very adamant about the fact that we needed
9 more time to consider the request regarding the six
10 insiders, and that more thoughtful and careful consideration
11 and analysis as needed for the programs that were proposed
12 for then. And frankly the analysis for then will include
13 both economic and non-economic factors.

14 Conversely, with regard to the non-insiders, while
15 the creditors' committee was not excited about the fact that
16 the Debtors requested retention payments of \$51 million to
17 virtually all of their 614 employees over the next three
18 years, the UCC made the decision that, as you correctly
19 pointed out earlier, that penalizing the non-insiders for
20 the situation we're in doesn't seem appropriate, and as
21 such, we focused on the discrete issues with the non-
22 insiders, and I'm going to raise those.

23 That being said, I don't want there to be any
24 misunderstanding about the following, which is the fact that
25 we were able to reach agreement on the non-insiders, and the

1 way that we reached agreement on them should not be viewed
2 as a roadmap of any sort with regard to each of the
3 insiders. We'll negotiate and discuss the insiders
4 separately.

5 The third thing I wanted to raise is a key facet
6 of the compromise, is that the retention program does not
7 bind the hand of the reorganized Debtors. I think you
8 alluded to this earlier, but all payments to the non-
9 insiders were made as for the effective date if not sooner,
10 subject to claw back that we talked about. This is designed
11 to give the reorganized Debtors the flexibility going
12 forward, and frankly, finality looking backward. I think
13 you also, you realize as well, because you've made an
14 illusion to it earlier, that this is actually better, in
15 some ways, for the employees, because they get their dollars
16 earlier.

17 Fourth, we, that all four groups appreciate the
18 Debtor's agreement, both with regard to economics, which are
19 the eight percent reduction, the overall plan from the non-
20 insiders, and the timing of the payments, which are slightly
21 delayed. I further point out something that you raised with
22 the Debtor's experts, which is that the eight percent
23 reduction only applies to 131 of the Debtor's 614 employees.
24 Meaning that roughly 79 percent of the workforce is not
25 affected by the economic reduction.

1 And I actually thought your question was perfect,
2 Your Honor, about the question about how the employees are
3 affect, or how that chart was affected by the decrease. And
4 in fact the Willis Towers Lawson person said that it wasn't.
5 And in fact, you know, because, as you correctly solicited
6 from the Willis Towers Lawson person, that chart deals with
7 2020 compensation. And in fact, we have now frontloaded
8 2020 compensation. And so one might argue that employees
9 are actually better off in looking at that chart.

10 Fifth, and finally, I do want to flag for the
11 Court the deferral of the approval of payment, of the
12 retention payments to eight non-insider employees, until the
13 October omnibus hearing. There was some back and forth
14 between both you and the Office of the United States
15 Trustee, as well as the ad hoc group of accountability
16 regarding certain items. And I would just say that we hope
17 to work with the Debtors on an appropriate resolution for
18 those employees, between now and the objection deadline, and
19 we are happy to include the ad hoc group of accountability
20 and the Office of the United States Trustee in those
21 discussions. I think they would benefit, and they would
22 understand why we asked for the deferral. With that, Your
23 Honor --

24 THE COURT: Can I interrupt you on that point?

25 MR. PREIS: Sure.

1 THE COURT: The U.S. Trustee is a government
2 official. I certainly trust the exercise of his discretion.
3 I'm assuming your discussions, which cover fairly personal
4 matters with the Debtors on that topic are confidential. I
5 would not want this five-person group, which has already
6 made unfounded and inflammatory statements, to go into such
7 a review untethered by confidentiality. I just don't trust
8 them. So you may, you may invite them, and if they're
9 willing to get under the tent, fine. But otherwise, no.

10 MR. HUEBNER: Your Honor, for what it's worth,
11 Your Honor, this obviously was -- we were not consulted.
12 This is our information about our employees. With all due
13 respect to Mr. Preis, we will have to talk later, I think,
14 about the mechanics for (indiscernible) people, and I don't
15 really think that should be offered in open court,
16 (indiscernible) information?

17 THE COURT: That's fine, you know where I'm coming
18 from.

19 MR. PREIS: Understood, Your Honor, and I should
20 have correctly pointed out that this would be subject to
21 confidentiality. I didn't mean anything otherwise, given
22 the sensitive nature of the reason for the deferral.

23 With that, Your Honor, I have nothing else to add,
24 but as I mentioned at the outset, I thought it would be
25 helpful for you in considering the objections, to understand

1 the position -- our position as to why we reached the
2 compromise. I don't know if either of the three
3 governmental groups have anything they would like to add as
4 well?

5 MR. TROOP: Your Honor, this is Andrew Troop of
6 the nonconsenting states. I would just reiterate Mr.
7 Preis's point that the compromise we've reached is
8 independent of the actual representations, that the Debtors
9 had made on a variety of points, and that all of those
10 issues are potentially in play in the future. This was a
11 compromise reached in recognition of the people involved and
12 the specific concerns that we have with respect to some of
13 them, which is why there is a deferral mechanism. And
14 unless you have any other questions for me, in particular,
15 Your Honor, that's all we have to say on this one.

16 THE COURT: Okay, thanks.

17 MR. HUEBNER: So Your Honor, if I may, just
18 because we had to go out of order because of those
19 connection problems. I just need about 60 more seconds, I'm
20 going to cover Mr. Preis's things. I will be extremely
21 brief.

22 Number one, just because Your Honor has noted at a
23 prior hearing that the media sometimes picks up on things in
24 ways that are not accurate and unhelpful, with apologies to
25 Mr. Preis, to call this \$51 million of retention, it's

1 actually in fact just completely inaccurate. This is a
2 combination of long-term incentives that have been earned
3 over a three-year period, that then would be repaid in 2021,
4 2022, and 2023, and the company's annual incentive program,
5 and a much smaller actual retention program, that I believe
6 is only about \$8.1 million.

7 I just, I really -- (indiscernible) to all of us,
8 if there was a headline that came out that said, you know,
9 51 million in retention bonuses approved, because that's
10 just flatly wrong. It's not what it is, there are many
11 components to it, and I think it's important that everyone
12 understand that clearly. I think we have been very clear.

13 With respect to the second point about the
14 request not to bind the hands of the post-emergence entity,
15 again or the exact reasons the Court asked about, we
16 actually at first were quite surprised and taken aback by
17 that request, because our goal is to create an enterprise
18 tant no matter want, people want to do it post-emergence, is
19 designed to be durable and to hold its people to maximize
20 value during whatever period it runs, in whatever form it
21 runs.

22 And obviously one of the reasons you have a long-
23 term incentive plan that is earned year by year, but paid on
24 a three-year schedule, is to hold people. And I don't think
25 I've ever had anybody in my whole career ask me, you know,

1 those payments due in '23 and '22, I want to pay them much
2 earlier, which is why as I said before, we understood it,
3 and we agreed to it as frankly our CFO and others were
4 concerned about the loss of the ten-foot hold.

5 Because somebody having to wait to actually get a
6 payment is frankly going to be viewed differently than the
7 risk of being sued for a claw back, especially for
8 potentially a more modest amount, or the cost of legal fees
9 just might not justify it, if someone were being rationale.
10 So we asked them, and added a claw back back in for some of
11 those, so at least we had that tool to hold the company
12 together, in all the ways we knew how, for the benefit of
13 stakeholders.

14 But again, we're not the ones that asked to
15 accelerate everybody's payments. I just, I don't want
16 people to think that this is sort of one of those situations
17 where the Debtors have thoughtlessly asked for quite big
18 bonuses, and to pay them too early to people. It's not true
19 at all. We were asked by the creditors to accelerate the
20 payments, which we did, and put a claw back back in. And I
21 think that that's really a very important point.

22 And then with respect to participation, again, I
23 have no disrespect at all, at all, to the five individuals,
24 and their life stories and experiences on the core committee
25 for accountability. But we have many, many cooks in this

1 kitchen with a lot of people, many people who are official
2 representatives, whether they are governmental officials, or
3 the UCCs for all creditors, or the U.S. trustee's office.
4 It's not going to be simple, frankly, I think, to
5 convenience the Debtors of Mr. Preis's quote, "offer", close
6 quote, that we should have individual employee information,
7 and data, and compensation data, and the like, be share with
8 yet another constituency. We're open to listen, but that's
9 actually something that's best discussed behind closed
10 doors, not at a hearing with 50, 70, 80 people listening in.

11 So with that, Your Honor, I appreciate at the end
12 of the day, we are, I think (indiscernible) again, which is
13 that we have non-objection, or support for this program,
14 from all of the major creditor consistency and economic
15 stakeholders in this case. The only two objections are that
16 of the trustee and the five individuals, who are represented
17 by the committee on accountability. And we would ask that
18 the modified form of order that of course includes the, what
19 if there is wrongdoing found language, be approved.

20 THE COURT: Okay. All right, anything else? All
21 right. I have before me that portion of the Debtor's
22 motion, dated September 9, 2020, for approval of a key
23 employee retention plan, which has various features in it,
24 but would basically cover 2020 through 2023 with the timing
25 adjustment laid out in the motion, and as modified, as laid

1 out in the Debtor's omnibus reply in support of the motion
2 the other day.

3 When evaluating such a plan, which I'll refer to
4 as the KERP, even though it has various elements to it, the
5 Court must first determine whether the employees to be paid
6 are insiders or not. That is because in Section 503(c)(1),
7 the Congress precluded, effectively, given the conditions in
8 that section, the application or approval of a key employee
9 retention plan for insiders.

10 The motion sets out how the Debtors went about
11 concluding whether the participants in the KERP are insiders
12 or not, under Section 101(31) of the Bankruptcy Code, in
13 large part based on, entirely based on prior rulings by me
14 in these cases, which in turn relied on well-established
15 case law, including *In re Borders Group, Inc.* 453 B.R. 459,
16 Bankr. S.D.N.Y. 2011, and *In re Charles P. Young Company*,
17 145 B.R. 131, Bankr. S.D.N.Y. 1996, and other cases that I
18 had previously cited.

19 No one has contended here that any of the
20 participants in the KERP is an insider, which means that
21 instead of having to meet the, essentially impossible test
22 to meet in Section 503(c)(1), the Debtors have to satisfy
23 the requirement of 11 U.S.C. Section 503(c)(3), see for
24 example, *In re Patriot Coal Corp.*, 492 B.R. 518, Bankr. E.D.
25 Missouri 2013. *In re Residential Capital, LLC*, 491 B.R. 73

1 Bankr. S.D.N.Y. 2013, and In re Global Aviation Holdings,
2 Inc., 478 B.R. 142, Bankr E.D.N.Y. 2012.

3 That test, as set forth in the statute, says that
4 there shall not, neither be allowed nor paid other transfers
5 or obligations that are outside the ordinary course of
6 business, and not justified by the facts and circumstances
7 of the case, including transfers made to or obligations
8 incurred for the benefit of officers, managers, or
9 consultants hired after the date of the filing of the
10 petition.

11 The case law is clear that the facts and
12 circumstances of the case requirement is to be interpreted
13 generally, as one interprets an action out of the ordinary
14 course by a Debtor in possession, or trustee, under Section
15 363(b) of the Bankruptcy Code, which is often referred to as
16 a business judgment standard, although that standard is not
17 the deferential corporate law business judgment standard,
18 but rather a standard laid out, I believe, by the Second
19 Circuit, in, among another cases In re Orion Pictures, 4
20 F.3d 1092, that requires the bankruptcy judge to determine
21 whether under the facts and circumstances, the KERP is the
22 proper exercise of business judgment, or makes good business
23 sense.

24 See also In re Velo Holdings, 472 B.R. 201-212,
25 Bankr. SDNY 2012. The Borders Group case that I previously

1 cited at Page 473, and most appropriately In re Dana Corp,
2 358 B.R. 567, Bankr. SDNY 2006, where in the context of a
3 determination under Section 503(c)(3), Judge Lifland laid
4 out a number of factors that would be worth considering when
5 determining whether an employee plan passes the facts and
6 circumstances test, i.e. as a proper exercise of business
7 judgment.

8 Those factors are well-recognized, and have been
9 applied by numerous other cases, including the ones that
10 I've also cited. They are, is there a reasonable
11 relationship between the plan proposed, and the results to
12 be obtained, i.e. will the key employees stay for as long as
13 it takes for the Debtor to reorganize, or market its assets,
14 as the case may be, i.e. is it calculated to achieve the
15 desired performance? Two, is the cost of the plan
16 reasonable in the context of Debtor's assets, liabilities
17 and earning potential?

18 Three, is the scope of the plan fair and
19 reasonable, does it apply to all employees, does it
20 discriminate unfairly? Four, is the plan consistent with
21 industry standards? Five, what will the due diligence
22 efforts of the Debtor and investigating the need for a plan,
23 analyzing which key employees need to be incentivized, what
24 is available, and what is generally applicable in a
25 particular industry? And lastly, did the Debtor receive

1 independent counsel when performing due diligence, and in
2 rating an authorizing the incentive compensation, or in this
3 case, the compensation, period.

4 Not mentioned by Judge Lifland, but very
5 important, I believe, is the notice and opportunity for a
6 hearing requirement that underlies the whole provision and
7 the business judgment standard as applied in bankruptcy
8 cases. And the nature of the responses to the proposal in
9 particular, whether the proposal has substantial support at
10 least among the creditor body. Not all these factors
11 necessarily will be applicable. Ultimately the Court,
12 again, has to evaluate the business judgment of the Debtors
13 in proposing the plan.

14 Here, as modified, as set forth again in the
15 Debtor's supplemental reply, or on to this reply, excuse me,
16 in support of the motion, the relief that's being sought
17 before me now has the support, as negotiated, with the key
18 constituencies in this case, the official unsecured
19 creditors committee, the ad hoc governmental committee, the
20 ad hoc committee of nonconsenting states, and the committee
21 of nonstate governmental entities, who again, represent
22 basically all the people in the United States. The proposal
23 is objected to by the United States Trustee, and by a group
24 of five personal injury claimants and no others.

25 In addition, it appears clear to me, indeed I

1 believe uncontroverted, that the KERP, as proposed, is at or
2 around the average, on a total basis, of all the factors
3 combined, of compensation in the Debtor's own industry, the
4 pharmaceutical industry. It's testified to both in a
5 declaration and on the record today, by the Debtor's
6 compensation consultant on this trial, from Willis Towers --
7 that is, a broad-based database of roughly 80 to 85
8 pharmaceutical companies of the same size, or roughly the
9 same size as the Debtors -- and moreover does not take into
10 account the additional pressures on a Debtor's non-insider
11 workforce and related uncertainty, resulting from the
12 Debtors being in Chapter 11, and there not yet being a
13 proposed Chapter 11 plan.

14 Congress, in Section 503(c)(3) for non-insiders
15 clearly preserved the ability to pay more than market, to
16 retain key employees who are not insiders. And the Debtors
17 could make a case for paying more than the 50th percentile,
18 give or take five percent above or below, with respect to
19 non-bankruptcy companies, given the pressures that are on
20 them, and their employees in this Chapter 11 case.

21 The plan further appears to me not to discriminate
22 unfairly among employees. It's quite comprehensive. It is
23 also consistent with the Debtor's approach, with respect to
24 their employees, for at least 20 years, and in the case of
25 most of their employees, for over 30 years. It is

1 uncontroverted that it's consistent with industry standards.
2 It is also uncontroverted, of course, that the Debtors'
3 board and compensation committee were advised by a
4 compensation consultant that's well-recognized as well as
5 counsel, and of course there was due diligence on what is
6 now before me by well-represented creditor groups, including
7 the official creditors' committee, which have the resources
8 to engage in the type of analysis that I've just described.

9 The U.S. Trustee has objected to the plan on two
10 grounds, one of which I find completely unjustified, even
11 frankly as being raised, which is that these employees, who
12 are concededly not insiders, should somehow have their
13 market-based comprehensive pay reduced substantially, by --
14 in light of the fact that the Debtors have not confirmed a
15 Chapter 11 plan yet, or have made an emergency fund
16 distribution, pending such confirmation.

17 I have never seen, and have been cited to no case
18 law where that would be -- where that type of analysis would
19 be relevant to these types of employees, and I can
20 understand why, given the fact that they have no say over
21 either of those things, other than just their ability to
22 keep working. They were clearly not negotiating the
23 emergency relief fund, that wasn't their job. And
24 similarly, they are not negotiating a Chapter 11 plan. The
25 people who are negotiating both of these matters were the

1 Debtor's senior management, the Debtor's professionals, and
2 professionals for other key constituents in the case, and in
3 the case of plan negotiations, two highly compensated and
4 effective mediators.

5 Secondly, the Debtor -- the U.S. Trustee contends
6 that the cost of one of the portions of the KERP as a
7 percentage of the Debtor's revenue, which is one of the
8 factors, arguably, in the Dana II analysis, I used the cost
9 of the plan reasonable in the context of Debtor's assets,
10 liabilities, and earning potential. That is considerably
11 over the 50th percentile. But I will note first that it is
12 only one of the factors, and moreover, it is just a cost
13 factor related to the Debtor's revenue, as opposed to
14 assets, liabilities, and the other factors listed by Judge
15 Lifland, including the importance of these employees and
16 whether the proposal is necessary to achieve the desired
17 result.

18 Far more important to me, frankly both in
19 connection with an evaluation of a KERP and a Key Employee
20 Incentive Program, which is not before me today, is how the
21 overall proposed compensation relates to the market in the
22 Debtor's industry, and although less meaningful, how it
23 relates to comparable companies in Chapter 11. Here, the
24 motion's underpinnings are clearly supported by the record,
25 and I believe it is quite easy to find that the KERP, as

1 negotiated, with the proper exercise of business judgment,
2 subject to review that is far beyond any sort of review that
3 would occur out of a bankruptcy case, and justified by the
4 facts and circumstances of the case.

5 I do have some concern of the acceleration of
6 payment upon the Debtor's emergence from bankruptcy. On the
7 other hand, that concern, which is frankly not retentive,
8 and of course one element of the Key Employee Retention Plan
9 is to retain employees. On the other hand, I believe it's
10 more important to pay employees a market level of
11 compensation on an aggregate basis to ensure their
12 retention, and in the few circumstances here where due
13 diligence shows that even more is required, to do so on a
14 very targeted and thoughtful basis, of which there's a
15 process in place now to meet that decision.

16 Further, I'm given some comfort by the fact that I
17 noted earlier in today's hearing that the key parties in
18 interest here have acted responsibly throughout this case
19 and in good faith to maximize value, so that that value can
20 be distributed to their constituents, to abate the opioid
21 crisis. It seems to me that they will not act foolishly to
22 cause the workforce to be unduly concerned about its future
23 following the effective date of the plan. I think they
24 simply want to preserve flexibility as to what a plan will
25 look like.

1 But I do not view this group, who after all are
2 attorneys general, and comparable city council -- I'm sorry,
3 city, county, and other representatives, travel
4 representatives, all of whom are fiduciaries for those
5 people, to take an action that would cause the Debtors to
6 lose substantial value, by losing substantial numbers of its
7 -- of their employees.

8 The five-person ad hoc committee essentially
9 argues that the Debtors, in the past and perhaps now,
10 although they've not offered any support for that matter of
11 contention, are essentially a criminal enterprise, and
12 therefore should not have employees who are compensated. I
13 have dealt with this in the past, that the Debtors are in a
14 highly regulated industry, their products are lawful, and
15 used in proper ways. The Debtors have substantial checks
16 and balances in place to ensure that that continues.

17 In addition, at my request at the beginning of the
18 case, the Debtors have negotiated with the key parties of
19 interest, and agreed upon the appointment of Mr. Vilsack as
20 their monitor, over and above the regulations that they are
21 under. I do not believe it is a propose exercise of
22 business judgment to pay employees of these companies below
23 market compensation, because of past events, pre-petition
24 events.

25 There is a, again, a provision that I had a

1 substantial hand in, a paragraph in the order that provides
2 for a claw back if past criminal activity has been
3 identified. The Debtors are on record that no such
4 misconduct will be permitted to occur post-petition, and so
5 I am focusing again on the business judgment of whether to
6 pay these non-insider employees a fair compensation on a
7 market rate. And to me, given the underlying premise that
8 has not been refuted here, that the value of these Debtors
9 is maximized by their continuation, and in fact that premise
10 has been if anything, strengthened by the result of the
11 mediation that just concluded, I concluded that objection
12 should be overruled.

13 One last point, I will note that there has been
14 loose language here, as loose language in prior objections,
15 that described this program as a bonus program.

16 The record is clear that these payments, in
17 addition to being, tracking a longstanding practice of over
18 30 years, in most cases, albeit reduced from what they were
19 prepetition, is necessary to compensate these employees at
20 market in their industry.

21 To me, as I've said previously, and has not been
22 refuted, but merely has just been stated again, it's a
23 bonus, without refuting my earlier finding. This is really
24 compensation; this is not a bonus. If there's any bonus
25 here, it's the limited stay bonus for the eight people. So

1 with that, I'll grant the motion; the order can be submitted
2 as it has been revised.

3 The last thing I'll say, and I'll be very brief,
4 as we may lose the feed here, since we've been on for going
5 close to four hours. I, my thinking on key employee
6 incentive plans has been evolving over the last few years.
7 And I think what I would benefit from, if the parties cannot
8 reach agreement on a key employee incentive plan for the
9 insiders is again, a focus on the market of the Debtor's
10 competitors. And a recognition, of course, that those plans
11 often include equity, which would be difficult to include
12 here, except for post-effective date equity, and even then
13 would be problematic.

14 And I think Willis Towers and people of their like
15 would be better off focusing on how to address that simple
16 distinction between equity and cash than on focusing on
17 Chapter 11 KEIPs, key employee incentive plans. I want to
18 know about what's the industry standard, and I want to know
19 whether the incentives are properly targeted.

20 I will note that fighting over other things
21 related to KEIPs really does not lead to much of a change,
22 if anything, but it does lead to more cost. See, for
23 example, Jared A. Elias, E-L-L-I-A-S, Regulating Bankruptcy
24 Bonuses, 92 California Southern Law Review, 653, March 2019.
25 It's fine to have guidelines and incentives. I'm fully

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1 onboard with that, particularly if negotiating with key
2 parties in interest. Looking at what other Chapter 11 KEIPS
3 did is less significant to me than the marketplace
4 generally, as long as the experts can translate cash bonuses
5 from incentive bonuses, that is, from stock bonuses, taking
6 into account the risk of the latter, and the assurance of
7 the former.

8 So with that being said, I'm not sure there's
9 anything else on today's agenda.

10 MR. RAND: Yes, Judge, can you hear me?

11 THE COURT: Yes, I can hear you.

12 MR. RAND: James Rand, I'm an inmate. I am a
13 personal injury claimant creditor, I'm calling you from the
14 United States Penitentiary, Terre Haute. I was scheduled
15 for 9:30 telephonic hearing with you, however due to the
16 perils of a maximum-security prison, it didn't happen.

17 But I'm in communication with you now, and this is
18 rather minute, but I filed a motion for tolling of filing
19 deadline. Due to the coronavirus sequestering and being
20 incommunicado, et cetera, I didn't have access to pens,
21 pencils, stamp, et cetera. I couldn't send my form in to
22 the Prime Clerk, and --

23 THE COURT: Mr. Rand, can I interrupt you?

24 MR. RAND: Yes, sir.

25 THE COURT: And I appreciate your patience of

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1 staying on the line throughout this whole hearing. I don't
2 believe that your motion is on the agenda for today's
3 hearing as a contested matter. When --

4 MR. RAND: I received notice from Court Solutions
5 to be in communication with you via telephone at 9:30 today,
6 sir.

7 THE COURT: But that's because you wanted access
8 to the hearing. I (indiscernible) --

9 MR. RAND: Is it necessary that I have a personal
10 communique with you in regards to a motion of tolling of
11 filing deadlines?

12 THE COURT: I'm going to tell you what you need to
13 do, okay?

14 MR. RAND: Yes, sir.

15 THE COURT: Okay, I'm assuming that you have filed
16 that motion, and asked to have it served. I doubt you've
17 actually served it yourself, given where you are.

18 MR. RAND: I've received a docket number. It has
19 been filed with the Bankruptcy Court.

20 THE COURT: All right, okay. Now you also have to
21 get a hearing date from my courtroom deputy, Ms. Lee. It
22 will probably be the next omnibus hearing date, under the
23 order that I entered earlier in this case, establishing
24 hearing procedures. That way the parties will know when it
25 is on the calendar, and they can address it.

1 If it's not on the agenda, if it's not on the
2 calendar with the hearing date, then they're not going to
3 address it, and I'm not going to address it, because it's --
4 they haven't had a chance to focus on it, and neither have
5 I. So I again apologize for you being on this call as long
6 as you have, but this isn't on today's agenda, and you need
7 to get it on the agenda by asking my courtroom deputy to put
8 it on the agenda, Ms. Li, L-I --

9 MR. RAND: His name is Lee?

10 THE COURT: Yeah, her name, Dorothy Li, L-I. You
11 can also speak to one of the Debtor's lawyers to put it on
12 the agenda as well.

13 MR. RAND: What is the actual phone number of Ms.
14 Li, if I may ask?

15 THE COURT: You know, I don't know, but if you
16 just call the Bankruptcy Court in White Plains, it'll get to
17 her.

18 MR. RAND: The what court, sir?

19 THE COURT: My court, the U.S. Bankruptcy Court,
20 S.D.N.Y, in White Plains, New York.

21 MR. RAND: I got you, sir. Well, I really enjoyed
22 listening, I got quite a continuing legal education, sir.

23 THE COURT: Okay, very well.

24 MR. HUEBNER: Your Honor, just on behalf of the
25 Debtors, we're obviously happy to try to help, obviously the

1 constraints the gentleman is operating under are
2 (indiscernible), and so --

3 THE COURT: One last point, Mr. Rand, one last
4 point. You know, you heard about the mediation, which
5 included a mediation of personal injury claims distribution,
6 not how they will be distributed among the Claimants. So I
7 don't know whether you're looking to have your claim be
8 deemed timely filed, because it missed the bar date. I'm
9 not quite sure what you're looking for, (indiscernible) --

10 MR. RAND: I filed a motion due to being
11 incommunicado, that I didn't meet the any deadline, from the
12 virus.

13 THE COURT: Fine, again you just have to get that
14 hearing date, and then it will be considered, or the Debtors
15 will deal with you on it, as they often do, and try to
16 resolve it with you without a contested hearing.

17 MR. HUEBNER: Your Honor, we obviously don't have
18 the motion in front of us, but you know, we will endeavor to
19 get in touch with Mr. Rand. Mr. Rand, just to help
20 everyone, Mr. McClammy from our firm, Jim McClammy is the
21 personal who is in general one of the points of intake for
22 claims and late filed claims issues. So if you do have the
23 opportunity to either email him or call him, we'll see what
24 we can do. Again, we don't know the substance yet, so I
25 don't want to overpromise, but you know --

1 MR. RAND: What number would I call, sir? Do you
2 have an actual number you can give me.

3 THE COURT: Just look up Davis Polk.

4 MR. RAND: Polk, how you spell?

5 THE COURT: Is the --

6 MR. HUEBNER: Your Honor, I think he can find it
7 on the internet, if you don't mind (indiscernible) --

8 THE COURT: Yeah, D-A-V-I-S --

9 MR. RAND: I don't have internet access, I'm in a
10 maximum-security prison. Polk, P-O-L-K, huh?

11 THE COURT: Davis Polk, like the president. D-A-
12 V-I-S, new word, Polk.

13 MR. HUEBNER: Yeah, why don't I just give him Mr.
14 McClammy's office line? Because I imagine things are quite
15 challenging over there. Which again, is available on the
16 internet, sir, I'm not giving up anything that he couldn't
17 find, (indiscernible) --

18 THE COURT: All right, that's fine.

19 MR. HUEBNER: Sir, it's (212) 450 --

20 MR. RAND: (212) 450 --

21 MR. HUEBNER: 4584.

22 MR. RAND: Well, sir, thank you for -- I'm very
23 much obliged to you. I'm the only person in the history of
24 the United States to be convicted of witness tampering where
25 there was no crime and no witness.

1 THE COURT: Well, all right, but that's neither
2 here nor there as far as this hearing is concerned. So let
3 me ask you, Mr. Huebner, is there anything else on the
4 agenda for today? I don't think there is.

5 MR. HUEBNER: No, Your Honor, everything else is
6 adjourned, hopefully adjourned never to return, it's mostly
7 the motion about (indiscernible).

8 THE COURT: Okay, very well. So I'll look for the
9 orders that I've asked you to send me, and I'll ring off at
10 this point. Thank you, all.

11 MR. RAND: Thank you, sir.

12 (Whereupon these proceedings were concluded at
13 1:55 PM)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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8 Sonya Ledanski Hyde

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20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

23 Mineola, NY 11501

24

25 Date: October 2, 2020

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